STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company	**:**	
d/b/a AmerenCILCO	**:**	
Central Illinois Public Service Company	**:**	
d/b/a AmerenCIPS	**:**	
Illinois Power Company	**:**	**10-0568**
d/b/a AmerenIP	**:**	
	:	
Verified Petition for Approval of	**:**	
Integrated Electric and Natural Gas	**:**	
Energy Efficiency Plan.	**:**	

ORDER

DATED: December 21, 2010

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By the Commission:

I. BACKGROUND AND PROCEDURAL HISTORY

On September 30, 2010, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP, filed a Petition seeking approval of its Electric Energy Efficiency and Demand-Response and Natural Gas Energy Efficiency Plan ("Petition"), pursuant to Section 8-103(f) and 8-104(f) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq. On October 21, 2010, the Ameren Illinois Utilities made a filing indicating that it had completed its reorganization, and that the Petitioners were now known as The Ameren Illinois Company d/b/a Ameren Illinois ("Ameren"). The People of the State of Illinois ("AG"), Citizens Utility Board ("CUB"), the Illinois Power Agency ("IPA"), Natural Resources Defense Council ("NRDC"), Illinois Green Economy Network, Department of Commerce and Economic Opportunity ("DCEO" or "Department"), and the Environmental Law and Policy Center ("ELPC") each intervened in this proceeding. Staff of the Illinois Commerce Commission ("Staff") also participated in this proceeding. Hearings were held in this matter before a duly authorized Administrative Law Judge of the Illinois Commerce Commission ("Commission") at its office in Springfield, Illinois on October 25 and November 28, 2010.

Post-hearing briefs were filed by Ameren, Staff, the IPA, the AG, CUB, DCEO, and jointly by NRDC and ELPC. Briefs on Exceptions were filed by Ameren, Staff, the IPA, the AG, CUB, DCEO, and jointly by NRDC and ELPC.

Ameren has previously filed two separate energy efficiency dockets, Docket No. 08-0104 which involved a voluntary natural gas efficiency plan, and Docket No. 07-0539, which Ameren filed pursuant to Section 8-103 of the Act and addressed Ameren's first electric energy efficiency plan ("Plan 1").

An Order was issued on February 6, 2008 and an Order On Rehearing on March 26, 2008, in Docket No. 07-0539, approving an electric energy efficiency plan for Ameren pursuant to Section 8-103 of the Act. The spending approved in Plan 1 for electric energy efficiency and demand-response programs was $13.8 Million, $29 Million, and $44.8 Million for successive plan years 1, 2, and 3 ("PY1, PY2 and PY3"), respectively; starting June 1, 2008. The residential programs approved in Ameren's Plan 1 electric energy efficiency and demand response programs were Residential DR - Direct Load Control, EE Home Energy Performance, Residential HVAC Diagnostics & Tune-Up, Residential Appliance Recycling, Residential Lighting & Appliances, Residential Multifamily, and Residential New HVAC. The Commercial and Industrial (“C&I”) Programs approved were Commercial Demand Credit, C&I Prescriptive, C&I Retro-commissioning, Commercial New Construction and Street Lighting.

An Order was issued on October 15, 2008, in Docket No. 08-0104, approving a voluntary natural gas energy efficiency plan for Ameren Illinois. The approved natural gas energy efficiency plan approved spending approved in Plan 1 for gas energy efficiency programs for January 2009 to May 2009 was $1.67 Million, for June 2009 to May 2010 was $4.42 Million, and for June 2010 to May 2011 was $5.63 Million. The residential programs approved in Ameren's gas energy efficiency plan were ENERGY STAR New Homes, Home Energy Performance, Residential Multi-family, Residential New HVAC, and Residential Low Income. The business programs approved in Ameren's proposed gas energy efficiency plan were Small Business Tune-Up and Small Business Food Service.

II. AMEREN'S INTEGRATED ENERGY EFFICIENCY AND DEMAND RESPONSE PLAN

A. Electric Savings Goals

1. Statutory Provisions

The Commission is required by statute to determine whether Ameren has met the efficiency standard as specified in Section 8-103(b) of the Act, as modified by subsections (d) and (e). The Act states in part:

> . . . If, after 3 years, an electric utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e), it shall make a contribution to the Low-Income Home Energy Assistance Program.
>
> . . .
>
> In addition, the responsibility for implementing the energy efficiency measures of the utility making the payment shall be transferred to the Illinois Power Agency if, after 3 years, or in any subsequent 3-year period,

> the utility fails to meet the efficiency standard specified in subsection (b) of this Section, as modified by subsections (d) and (e).

(220 ILCS 5/8-103(i))

The timeframe for the efficiency standard evaluations for PY4, PY5, and PY6 contained in this Plan is "after 3 years" and the "subsequent 3-year period" considering the first Commission-approved 3-year Plan (PY1, PY2, and PY3) will be complete when the instant 3-year Plan begins. Thus, an annual determination regarding whether Ameren has met the efficiency standard is necessary considering the efficiency standard as specified in Section 8-103(b) refers to "incremental annual energy savings goals."

In addition, the Commission is required by statute to determine whether the DCEO has implemented its share of energy efficiency measures required by the standards in Section 8-103(b). The Act states:

> If, after 3 years, or any subsequent 3-year period, the Department fails to implement the Department's share of energy efficiency measures required by the standards in subsection (b), then the Illinois Power Agency may assume responsibility for and control of the Department's share of the required energy efficiency measures. The Agency shall implement a competitive procurement program to procure resources necessary to meet the standards specified in this Section, with the costs of these resources to be recovered in the same manner as provided for the Department in this Section.

(220 ILCS 5/8-103(j))

As with Ameren, an annual determination regarding whether the Department has implemented the Department's share of energy efficiency measures required by the standards in Section 8-103(b) is necessary considering the standards refer to implementation of cost-effective energy efficiency measures to meet "incremental annual energy savings goals."

In its prior Ameren Energy Efficiency Order: Approval of the Energy Efficiency and Demand-Response Plan, Docket No. 07-0539 (February 6, 2008), the Commission ordered that:

> This Commission is required by statute to review Ameren's Plan for purposes of meeting the statutory goals (as opposed to a prudence review) during the second and third year of Ameren's plan. (220 ILCS 5/12-103(i) and (j)). The dates are as follows for commencement of a Commission docket reviewing Ameren's plan to determine whether it meets the statutory energy efficiency goals: September 1, 2010, for the second year and September 1, 2011, for the third year. The Commission

> believes that initiating proceedings on these dates is appropriate to ensure compliance with the Act. On or before those dates, Staff is directed to provide the Commission with draft orders that initiate review pursuant to this portion of the statute.

(Docket No. 07-0539, Final Order at 20, February 6, 2008)

Staff requests the Commission adopt the following dates for commencement of a Commission docket(s) reviewing: (1) whether Ameren has met the efficiency standard as specified in Section 8-103(b), as modified by subsections (d) and (e); and (2) whether the Department has implemented the Department's share of energy efficiency measures required by the standards in Section 8-103(b):

January 31, 2013 for review of Plan Year 4 (06/01/2011 – 05/31/2012);
January 31, 2014 for review of Plan Year 5 (06/01/2012 – 05/31/2013);
January 30, 2015 for review of Plan Year 6 (06/01/2013 – 05/31/2014).

Staff believes that initiating proceedings on these dates is appropriate to ensure compliance with the Act. On or before those dates, Staff indicates it will provide the Commission with draft orders that initiate review, pursuant to Section 8-103(i) and (j).

The Act requires that Ameren "[d]emonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of [the Act] as modified by subsections (d) and (e)." 220 ILCS 5/8-103(f)(1). This requirement references the statutory incremental electric energy savings goals of 0.8% of energy delivered in PY4, 1.0% of energy delivered in PY5, and 1.4% of energy delivered in PY6, and the requirement to reduce peak demand each year by 0.1% over the prior year for certain customers.

In addition to meeting the modified energy savings and demand response goals, the Act mandates that Ameren must implement 100% of any dedicated demand-response measures and 75% of the energy efficiency measures approved by the Commission. The remaining 25% of approved energy efficiency measures are implemented by the DCEO. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts." The DCEO is charged with coordinating the implementation of these measures.

Also, Plan 2 must:

> Present specific proposals to implement new building and appliance standards that have been placed into effect; present estimates of the total amount paid for service expressed on a per kilowatt-hour [kWh] basis associated with the proposed portfolio of measures; Coordinate with the [DCEO] to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or

> below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income; demonstrate that its overall portfolio of energy efficiency and demand‑response measures, not including programs covered by item (4) . . . are cost‑effective using the total resource cost test and represent a diverse cross‑section of opportunities for customers of all rate classes to participate in the programs; include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand‑response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission‑approved programs; and provide for an annual independent evaluation of the performance of the cost‑effectiveness of the utility's portfolio of measures and the [DCEO's] portfolio of measures, as well as a full review of the 3‑year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going‑forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

In addition, the Act calls for utilities to limit program revenue allocated to the demonstration of breakthrough equipment and devices to no more than 3%. Finally, the Act contains penalty provisions. In addition to imposing a monetary penalty, the Act transfers efficiency programs to the IPA if a utility fails to meet the efficiency goals as modified by the Commission.

2. Ameren's Plan

a. Ameren's Position

Ameren states that Plan 2 achieves the statutory electric savings goals by proposing modified savings goals that are consistent with the Act's spending limitation and corresponding mandate to modify savings goals in accordance with the spending limitation. Ameren's modified goals translate to 214,489 megawatt-hours "MWh") for PY4, 202,145 MWh for PY5, and 186,725 MWh for PY6. Ameren claims it will meet the Act's demand response reduction goals through energy efficiency programs already proposed and therefore it does not propose a separate demand-response program.

Ameren contends that Plan 2 meets the Act's requirement for utilities to implement 75% of the energy efficiency measures approved by the Commission and DCEO to implement the remaining 25% of energy efficiency measures approved by the Commission. Ameren states this percentage was allocated as "the percentage of the portfolio's costs" in accordance with the Commission's Final Order in Docket No. 07-0539.

Ameren cited the DCEO's public sector programs and stated that at least 10% of the entire portfolio measures for Plan 2 are directed to local governments, municipal corporations, school districts and community colleges in accordance with the Act. Ameren claims that no party has put forth evidence suggesting Plan 2 fails this requirement.

In addition, Ameren opines that DCEO agreed to satisfy the new building and appliance standards requirement but notwithstanding this agreement, Plan 2 presents specific proposals to implement new building and appliance standards that have been placed into effect through the Residential ENERGY STAR New Homes Program, the ramping down of the compact florescent light ("CFL") funded portion of the Residential Lighting program as a result of the Energy Independence and Security Act of 2007 ("EISA"), the Residential heating, ventilation, and air conditioning ("HVAC") program, and building new construction projects using existing minimum code requirements as the benchmark and standard. Ameren notes that no party has submitted evidence contesting Plan 2's implementation of new building and appliance standards.

Ameren also states that Plan 2 presents estimates of the total amount paid for service on a kilowatt-hour ("kWh") basis as required under Section 8-103(f)(3) and that "[t]he average charge is expected to be 0.1543 ¢/kWh for the plan year beginning June 1, 2011 and 0.1546 ¢/kWh each year thereafter." Ameren avers that Staff agrees that Plan 2 meets this requirement and no Intervenor has offered evidence contesting this point.

Ameren pointed to the DCEO filing as demonstrating that Plan 2 will "offer a portfolio of energy efficiency programs targeted to households at or below 80% of area median income ("80 AMI") at a funding level equal to the proportionate share of the amount paid by those households that pay for electric and/or gas service at or below 150% of the federal poverty level" in accordance with Section 8-103(f)(4) of the Act. Ameren states that Staff agrees Plan 2 satisfies this requirement, and no party has asserted otherwise.

Additionally, as Section 8-103(f)(5) requires, Ameren contends that it screened over 500 measures using the state-of-the-art DSMore software tool, and that measures in Plan 2, excluding low-income measures administered by the DCEO, are cost-effective under the Illinois Total Resource Cost ("TRC") test and represent a diverse cross-section of opportunities for all customers. Ameren explains that Plan 2 includes only measures and programs that pass the TRC test on the overall portfolio level, each overall program level, and the individual measure-level. Ameren also submits that Plan 2 offers programs for residential and commercial customers and that Staff again concurs that Plan 2 is cost-effective and represents a diverse cross-section of opportunities for all customers.

Ameren points to Rider EDR as its required cost-recovery tariff mechanism and notes that Rider EDR was approved by the Commission in Docket No. 07-0539. Ameren witness Schonhoff testified that Plan 2 includes only an update to the spending limits for PY4, PY5, and PY6 and that no changes to the tariff are necessary. Ameren avers that Staff agrees that Plan 2 meets this requirement and that it is undisputed that the Rider fulfills the statutory requirement.

Ameren explains that its proposal complies with the Act’s evaluation, measurement, and verification ("EM&V") requirements, in that it also provides for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of natural gas measures and the DCEO's portfolio of natural gas measures. Moreover, Ameren opines that the consultant provides an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and the DCEO's portfolios of measures and broader net program impacts and, to the extent practical, for adjustment of the measures on a going forward basis as a result of the evaluations. Ameren states that per the Act; the resources dedicated to the evaluation of the Plan do not exceed 3% of portfolio resources in any given 3-year period. Ameren also claims that the Plan 2 budget allocation for breakthrough equipment and devices was limited to 3% of the total portfolio budget.

Ameren urges the Commission to approve it's proposed modified goals of 214,489 MWh for PY4, 202,145 MWh for PY5, and 186,725 MWh for PY6, if the Commission approves Ameren's proposal to achieve peak demand reduction through existing programs. Ameren argues the Commission has the authority to approve modified energy efficiency goals and noted that no party suggests otherwise. Ameren argues that the plain, ordinary meaning of the Act provides that the electric efficiency goals must be modified by the spending limit when required.

Ameren asserts that the “notwithstanding” language in the spending cap mandates that an electric utility “shall reduce” the number of efficiency and demand-response measures it implements in any single year as much as necessary “to limit” the increase in retail customer payments to the amounts set in the Act. Ameren also notes that the Act refers to the goals “as modified” no less than 7 times, suggesting that modification is not only allowed but actually assumed by the legislature. Further, Ameren noted that the Commission itself has previously acknowledged that efficiency goals can be modified by subsection (d)’s cost constraints, citing the Final Order in Docket No. 07-0539.

Ameren avers that its interpretation is consistent with the Act, which compels the Commission to review the spending limits by June 30, 2011. Ameren opines that this provision indicates that the legislature contemplated that a utility may need to modify its goals under the spending cap. Ameren further notes that Staff and the NRDC suggest the Commission should approve modified goals, although not the modified goals proposed by Ameren.

Ameren states that it developed the modified electric efficiency goals proposed in Plan 2 after completing its analysis and commissioning an independent study by the Cadmus Group (“Cadmus Study”). Ameren suggests that the Cadmus Group found the kWh savings targets set forth in the statute to be extremely aggressive, and that it would be unrealistic for Ameren to be able to meet them at the prescribed spending limits. Ameren argues that no party has meaningfully contested Cadmus' findings.

Ameren explains that in developing Plan 2, it compiled a broad of list of efficiency measures from several sources and based them on a master list produced by Morgan Marketing Partners ("MMP"). Ameren witness Costenaro stated the list drew from multiple sources that serve as national standards (including the U.S. EPA Energy Star Program) and contained several hundred unique measures applicable to residential, commercial, and industrial buildings. Mr. Costenaro testified the list was also refined with hundreds of weather-sensitive measures and custom building simulations representative of the Ameren territories.

Mr. Costenaro explained that, to be more comprehensive, Ameren then combined the MMP database with similar energy efficiency potential studies developed by well-known independent energy consultants, Cadmus and Global Energy Partners, LLC, and augmented the dataset with data from several other industry sources to create a robust, comprehensive list of efficiency measures. Finally, Mr. Costenaro testified that Ameren incorporated measure inputs from actual Ameren programs currently being implemented in the field, utilizing the experience of the implementation teams and the impact results of evaluation, verification, and measurement efforts. Ameren states that it combined all these sources to create and refine its composite Master Measure Database which it then used to develop what it considered a comprehensive, diverse portfolio of electricity efficiency measures.

Ameren witness Costenaro testified that meeting the Act's unmodified goals would require substantially more funding than the Act permits and would result in Ameren's customer rates being increased more than allowed under the law. Specifically, Ameren estimated that, assuming its proposed kWh savings and budgets scale linearly, the 3-year budget required to achieve the statutory savings targets would be approximately $100 Million higher than the statutory spending limit and Ameren's required budgets would increase to approximately $51.3, $70.1 and $108.6 Million for PY4, PY5, and PY6 respectively. Ameren notes that Staff agrees that it is reasonable to approve a lower savings requirement for Ameren.

While its Plan 2 proposes modified electric goals, Ameren states that it commits that all possible savings will be maximized within the spending limit, and that all budget funds will be spent to achieve, or exceed modified goals to the extent possible per the spending limit. Ameren asserts that approval of its modified goals would not provide a disincentive for it to strive to exceed those goals, as it has committed to spending all available funding within the statutory limit, even if it somehow meets the modified goals below budget.

As for Ameren's Benchmarking Analysis, Ameren explains that the results of independent expert Mr. Edward Weaver confirm its findings that it is unrealistic to expect Ameren to achieve the unmodified goals within the spending limit and that Plan 2's modified goals are reasonable.

Ameren witness Weaver performed a benchmarking analysis that contained two parts. First, it compared the savings targets and spending limitations required by the Act to those achieved by portfolios elsewhere in the United States in 2008 and 2009. Mr. Weaver's analysis showed that none of the 39 benchmarks from 2008 and only one of the 23 benchmarks from 2009 were able to meet the Act's PY6 savings target within the Act's spending limitations, which led to the conclusion that the Act's spending goals are unrealistic given its funding limitations.

Second, Mr. Weaver compared the savings and spending proposed by Ameren to those achieved by portfolios implemented in other areas of the United States in 2009. His analysis showed that, after adjusting for changes in lighting markets driven by federal efficiency standards, the savings proposed by Ameren and DCEO were in line with savings achieved by these other portfolios, given the Act's spending limitations. Based on this analysis, Mr. Weaver concluded that Ameren's proposed modified goals are reasonable.

According to Ameren, it is important to consider that the issue of whether the Act requires a separate and distinct demand-response measure by which the utilities must meet the Act's peak demand reduction requirements, or whether the utilities may meet the peak demand reduction requirements through existing energy efficiency programs, is a matter of first impression with the Commission. Ameren believes it is crucial that the decision be applied consistently to both Ameren and ComEd, as both utilities propose to meet the Act's peak demand reduction goals without a dedicated demand-response program. Ameren believes this approach is consistent with both the letter and the spirit of the Act. Ameren argues that nothing in the Act prohibits utilities from meeting the peak demand goals through existing energy efficiency programs. Ameren also asserts that especially during a time when utilities are hard-pressed to meet the energy efficiency goals, it is more sensible to allow utilities to meet the demand response goals in any manner they can and reallocate money that would otherwise be devoted to a demand response program to programs that will help increase kWh savings.

Ameren argues that the Act allows utilities to meet the peak reduction goals without a separate, dedicated demand-response program. Should the Commission feel otherwise, Ameren requests that it order Ameren to implement its originally proposed Voltage Optimization Program, with the understanding that those funds will limit Ameren's ability to achieve any additional kWh savings set forth in Ameren's current proposal.

Ameren originally proposed a demand response program called Voltage Optimization. The AG, the ELPC, and Staff all oppose aspects of the Voltage Optimization Program. Ameren appreciates the points raised by the AG and others and has agreed to withdraw the Voltage Optimization Demand Response program and use the associated funds to achieve additional kWh savings, which also increases kW savings. Ameren also agrees to reallocate Demand Response program funds proportionally across the other programs thus preserving its balance of managing a diverse set of programs across all customer segments. Ameren says this reallocation will increase electricity savings to an estimated 214,489 MWh for PY4, 202,145 MWh for PY5, and 186,725 MWh for PY6, a total increase of 3.0%, or 17,818 MWh over three years. Ameren says it will meet the peak demand requirements through its other programs. Ameren requests approval to withdraw the Voltage Optimization Program and reallocate the funding to existing energy efficiency programs. Should the Commission determine the Act requires a separate demand-response program, Ameren requests the Commission to order it to implement the Voltage Optimization Program as originally proposed.

b. Staff's Position

Staff notes the Commission's guidelines for approving or disapproving the plan are set forth in the statutory filing requirements of Section 8-103(f)(1)-(7) of the Act. If the evidence in the record shows that a utility has met each of these seven filing requirements, its plan should be approved.

Staff states that Ameren's figures show that the required energy efficiency sufficient to satisfy the statute translates into the following MWh of required electric energy efficiency savings: 309,732 MWh in PY4, 392,640 MWh in PY5, and 557,787 MWh in PY6. Staff notes these values are derived from the Company's projection of energy delivery: 38,716,487 MWh in PY4; 39,263,963 MWh in PY5, and 39,841,950 MWh in PY6. Staff suggests that the evidence in the record has not demonstrated that Ameren will achieve the requirement in subsection (b) of Section 8-103, as modified by subsection (d).

Staff states that the peak demand reduction standard identified in Section 8-103 of the Act provides for electric utilities to implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, which requirement commences June 1, 2008 and continues for 10 years. Ameren's Plan states that the peak demand reduction requirement translates into megawatt ("MW") reductions of peak electricity demand: 4.42 MW in PY4, 4.20 MW in PY5, and 4.16 MW in PY6. Staff notes it did not perform a thorough review of these projections within this expedited proceeding, but has no reason to question Ameren's underlying forecast. Staff avers that demand-response measures are defined to include not only measures that shift demand from peak to off-peak periods (e.g., Real Time Pricing ("RTP"), AC cycling), but also measures that decrease peak electricity demand in general (e.g., high efficiency AC unit). Staff states that Ameren's Plan is designed to meet the requirement as set forth in Section 8-103(c).

Staff notes the Act allows for a modification to the requirements set forth in subsections (b) and (c) of Section 8-103. Ameren's Plan presents the spending limits associated with Section 8-103(d) based on current information and estimates as $59,261,622 in PY4, $60,095,066 in PY5, and $60,733,316 in PY6.

Staff notes that Ameren calculates the average charge is expected to be 0.1543 ¢/kWh for the plan year beginning June 1, 2011 and 0.1546 ¢/kWh each year thereafter. This is due to the statutory limit for PY5 and each year thereafter of the greater of either 2.015% of the amount paid per kWh during the year ending May 31, 2007 or the incremental amount per kWh paid in PY4. Staff recommends the Commission order Ameren to update its energy savings goals along with its spending screens as part of Ameren's annual reconciliation process such that the energy savings goal will be adjusted relative to any adjustment in the spending screen.

Staff agrees that Ameren has met the second, third and fifth conditions for approval of its plan.

Requirement 4 for approval requires that Ameren coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level, as well as with energy efficiency programs being targeted to households with incomes at or below 80% of area median income. Staff notes that DCEO originally filed for approval of its plan independently in Docket No. 10-0569, but later moved to dismiss that docket and intervened in the various efficiency dockets. It does not appear to Staff that Ameren filed its plan in conjunction and agreement with DCEO.

As a result, DCEO is, in Staff's opinion, only marginally in compliance with the statutes. As such, Staff asks the Commission to require DCEO to provide a more transparent process to both the utilities and the Stakeholder Advisory Group ("SAG") prior to submitting future plans. Part of this process should be adequate time for the utilities to incorporate the DCEO's budget into the utilities' plans. It should also include allowing the SAG adequate time to provide feedback for incorporation into its plan.

Staff states the sixth requirement requires Ameren to include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs. Staff notes that Ameren offers in satisfaction of the requirement, Rider EDR, which was approved in Docket No. 07-0539.

Staff proposes that Rider EDR include specific language in the tariff which prohibits the recovery of incentive compensation, and recommends that the Commission order the inclusion of suitable language in either the definition of Incremental Costs or in the Terms and Conditions section of the Rider EDR. Staff also recommends that Rider EDR include language in the tariff that requires Ameren to provide testimony in annual Energy Efficiency Reconciliation Dockets attesting that all costs recovered through the Rider were prudently and reasonably incurred.

In requirement 7, Staff indicates the plan must provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations with the resources dedicated to evaluation not exceeding 3% of portfolio resources in any given year. Staff suggests that Ameren has satisfied this requirement, and recommends the Commission order Ameren to file the annual independent evaluation required by Section 8-103(f)(7) via the Commission's e-Docket system in Docket No. 10-0568.

c. AG's Position

The AG states that in each of the plan years, Ameren proposes to reduce the statutory efficiency savings goals to below the statutory requirements, as well as having the total savings amount decrease from year to year. The AG notes that the energy efficiency statute directs the Commission to review utilities' Plans every three years, and enter an order, after public comment, within three months. The AG also notes the seven standards for review which were previously mentioned.

d. CUB's Position

CUB notes that Ameren's proposed Plan falls well short of the statutory electricity savings goals. Claiming it is impossible to meet the statutory goals, Ameren is requesting that the Commission approve modified electric energy savings goals for PY4, PY5, and PY6 based upon the spending screens calculated by Ameren under Section 8-103 of the Act. Ameren believes its modified electric spending screen reflects what is "realistically achievable within the spending limit."

CUB recommends that the Commission not approve Ameren's modified savings goals. CUB states the statute is clear on what the savings goals are for Ameren. Instead of treating the spending screens as limiting the goals of the plan, CUB opines that the Commission should view the spending screens as mechanisms to ensure that ratepayer dollars fund only those programs which are the most cost-effective. CUB argues the Commission should require Ameren to demonstrate that it cannot structure a portfolio which meets those two requirements by more cost effectively restructuring its measures.

CUB notes that Ameren's proposed modified targets fall well short of the statutory goals, and suggest that Ameren's Plan falls well short of what the Commission should accept before any modified statutory goals are approved. Even though the statute requires Ameren to meet electric energy savings targets of 0.8%, 1.0%, and 1.4% for each Plan Year respectively, CUB states that Ameren has proposed a Plan with targets of 0.65%, 0.61%, and 0.56%, so that instead of savings goals that increase over time, as required by the law, Ameren has actually proposed savings goals that decrease over its three-year Plan. Moreover, CUB avers that Ameren has not proposed any demand response program at all, which goes against the plain language of the Act. Before any modification to Ameren's statutory savings goals is made, CUB argues the Commission should require Ameren to prove that it cannot restructure its measures in a more cost-effective manner, and require Ameren to incorporate the suggestions of Staff and other Intervenors as to how that restructuring can be done.

e. IPA's Position

The IPA notes that the Act imposes on Ameren the ultimate responsibility to design, develop and file energy efficiency ("EE") and demand response ("DR") measures and plans with the Commission, however, Ameren shares with the DCEO the obligation to implement EE programs, while Ameren maintains exclusive control over implementing DR programs. The IPA states that Ameren is required to implement programs and measures to achieve at least 75% of the EE statutory targets, and DCEO is required to implement programs to achieve 25% of the statutory target. While DCEO is required to implement 25% of the targets, the IPA states that the costs associated with DCEO and Ameren’s EE programs are not allocated pro rata.

The IPA asserts that if DCEO is unable to meet its annual energy efficiency savings goal of 25%, then Ameren and DCEO are required to jointly submit a proposal to the Commission explaining the performance shortfall, and recommending an appropriate modification to the plan. The IPA opines that the Act does not give Ameren an opportunity to request a modification of its plan from the Commission if DCEO expects to fall short of the statutorily mandated EE savings; the modification to the statutory obligation occurs only after DCEO tries, but fails to achieve the statutory obligation. The IPA avers that if Ameren fails to meet its required efficiency standards after three years, the responsibility for implementing the energy efficiency measures shall be transferred to the IPA.

3. Ameren Proposed Modified Goals

Based on Staff and various Intervenor's suggestions during the pendency of the docket, Ameren has proposed various modifications to its original plan. Ameren explains that it appreciates CUB’s suggestion of incorporating a Real Time Pricing Program in future plans. As Ameren witness Woolcutt noted, Ameren already operates a residential RTP program with assistance from a division of the Center for Neighborhood Technology (“CNT Energy”) under Rider Power Smart Pricing (“PSP”). Ameren further notes that a legislative determination is needed to approve the continuation of the program and that the RTP program has not yet been evaluated for cost-effectiveness, but agrees that after evaluation Ameren will seek input from interested stakeholders and determine whether expansion of residential RTP through the Energy Efficiency and Demand Response program is appropriate in future plans.

Ameren stated it agrees that Smart Energy Design Assistance Center ("SEDAC") and Large-Customer Energy Assistance Program ("LEAP") are important tools and explained that it already collaborates with them. Ameren Illinois explained that SEDAC is an important channel and program ally for Ameren programs whereby Ameren recommends customers to SEDAC for a free audit; SEDAC provides a list of customers that have received audits to Ameren for portfolio program contact.

Ameren notes that various parties have suggested that it expand its residential lighting program and achieve increased savings. Ameren agrees that there may be opportunities to increase energy savings through expansion of the residential lighting program and that it is fully committed to seizing opportunities to exceed planning goals if they materialize. Given current information about the EISA's likely impact on lighting, Ameren asserts that Intervenors are wrong to simply assume such opportunities will exist. Ameren explains that Plan 2, including its proposal to analyze EISA's impact on the Illinois lighting market and then reevaluate its programs and measures, is much more reasonable and provides more certainty than arbitrarily increasing participation levels to achieve parity with Commonwealth Edison Company's ("ComEd") or Intervenors' other unsubstantiated suggestions.

Ameren argues that the AG's proposal to adopt an upstream lighting proposal has potential but is unproven and contains many risks. Ameren notes that AG witness Mosenthal never quantified the amount of savings an upstream lighting program might generate, did not assume that expansion of this program would enable Ameren to meet the Act's unmodified goals, and recommended that Ameren conduct further study before implementing such a program.

Ameren is concerned that the AG's upstream commercial and industrial incentives proposal shifts focus and transactions away from customers and contractors, is not easily tracked for verification, provides less information on projects for evaluation, has potential for double dipping with customer-driven initiatives, and interrupts interactions with facility managers and reduces follow-up non-lighting measures. Ameren avers that these concerns are serious and come directly from a presentation authored by Mr. Mosenthal that addressed the risks of an upstream lighting approach.

Although various parties have argued Ameren should leverage outside funds to increase energy savings, Ameren asserts there simply is no evidence in the record that there is any available outside funding Ameren can leverage that would warrant increasing the electric energy savings goals.

Ameren is also generally skeptical that a Tariff Installation Program is workable in Illinois due to the deregulated environment. Ameren asserts that ELPC witness Crandall's proposal could potentially set back the efforts of the Commission, Ameren, and retail electric suppliers to reduce barriers to the efforts of those suppliers seeking to serve all electric customers as ordered under PA 95-0700.

While several parties suggest Ameren consider using on-bill financing to achieve savings, Ameren explains that it anticipates recovering some on-bill financing costs associated with natural gas measures through Rider GER in PY4, and it also anticipates recovering costs associated with electricity measures through Rider EDR. Ameren acknowledges, though, that the availability of an on-bill financing program is subject to the results of the request for proposal ("RFP") process, contract negotiation with the financial institution and successful project implementation. Further, Ameren witness

Martin testified that the approved on-bill financing program "is significantly hindered by the legislation's payback criterion, which requires that the energy savings must be equal or greater than the total customer costs (including measure, installation and financing costs)." Ameren explains that it has found only two situations where Ameren has successfully applied this payback criterion: "1600 square feet or more of insulation or conditions where a customer can bundle measures such as insulation and HVAC equipment in its Moderate Income program." Ameren concludes that the program remains totally unproven in its ability to attract substantial savings and should not weigh against adopting the modified goals.

Ameren also asserts that the provisions providing for on-bill financing are separate and distinct from those provisions addressing energy efficiency and demand response, and thus not meant to be integrated into Sections 8-103 and 8-104. Ameren explained that the on-bill financing statute is concerned with saving money for consumers, while the energy efficiency and demand response Act is concerned with the utility itself reducing delivery load. Ameren agrees to explore the use of on-bill financing, to the extent possible, but due to the presently tenuous connection between on-bill financing and energy savings, urges the Commission to not require its inclusion in Plan 2.

Ameren also argues that it should not be required to leverage off-bill financing because there is no evidence that it would produce savings, or is available in practice. Ameren contends that it is better to use incentives to attract participants, and that the costs of implementing an off-bill financing program would lead to a decreased amount of portfolio programs.

Ameren witness Martin testified that Ameren has already leveraged money from the American Recovery and Reinvestment Act ("ARRA") by helping coordinate furnace and air conditioning incentives through its implementation contractor, Conservation Services Group ("CSG"). Mr. Martin also testified that Ameren applied directly for an ARRA grant in 2009, but was denied. Ameren states it has investigated the potential for leveraging Tax Increment Financing ("TIF") funds, but so far funding through redirection of TIF funds has not been successful. To date, Ameren explained it has not secured any outside funding and does not believe it to be available.

Ameren explains that it supports the theory of financing program costs through capitalizing the cost of Company owned or operated physical assets as advanced by some Intervenors, however Ameren explains that it has no equipment that could be capitalized.

Ameren agrees that the stakeholder group should further investigate the potential for performance contracting, but states that due to the uncertainty regarding the outcome of these investigations and the lengthy time for deployment, no adjustment to the modified goals as proposed by Ameren is warranted.

a. Staff's Position

Staff notes that Ameren is proposing the total savings standard be modified from that required by statute, to 250,551 MWh, 238,372 MWh, and 223,540 MWh for PY4 through PY6, respectively. Of the total savings for the three plan-years, Staff states Ameren would be responsible for 208,525 MWh, 195,973 MWh, and 181,044 MWh, respectively, with the remaining MWh savings assigned to the DCEO.

While Staff does not oppose the concept of lowering the savings goals, it is not confident that the modified targets requested by Ameren are sufficiently high. Staff agrees with Ameren that expanding programs is likely to cost more money per unit, as the programs would be pursuing harder-to-reach savings opportunities with less motivated customers. Staff is also of the opinion that it is likely that many of the simple low-cost measures have already been implemented and newer measures are also likely to cost more to implement.

In addition to exhausting much of the so-called “low-hanging fruit,” the EISA has provisions prohibiting the manufacture of certain incandescent bulbs. While Staff understands that a great deal of savings in the first three-year plan resulted from financial incentives to install CFL bulbs, as a result of the EISA, after January 1, 2012, much of the savings from light bulbs will no longer be incremental as required by Section 8-103(b) of the Act.

Since it is likely that each additional MWh of energy saved is going to be more costly to achieve while the budget is not increasing proportional to the savings requirements, and the savings from the largest element of the EEDR program are going to decline starting January 1, 2012, Staff believes it is reasonable to approve a lower savings requirement for Ameren.

While Staff agrees that lower goals are reasonable, Staff finds it likely that kWh savings higher than proposed by Ameren can be achieved. Staff opines that Ameren's analysis is flawed in that it fails to recognize its status as an integrated gas and electric utility. Staff avers that integrating both gas and electric programs should reduce administrative costs, which would mean that more funds in a given budget are available to be spent on actual energy savings.

In addition, Staff also believes that Ameren’s request to modify savings goals is flawed because additional savings can be derived by increasing expenditures in the gas energy efficiency portfolio by focusing on dual gas and electric saving measures. Staff avers that the gas energy efficiency law sets gas savings standards on a cumulative basis. For example, Staff notes the statute requires gas utilities to achieve 0.2% annual incremental savings for the year ending May 31, 2012 and 0.4% additional annual incremental savings in the year ending May 31, 2013. Staff opines that Ameren could meet its Year 2 standard either by having incremental savings of 0.4% in PY2 or by reaching 0.6% total Year 1 and Year 2 incremental gas savings through PY2, which

Staff believes is relevant to electric savings as many of the gas energy efficiency measures also save electricity.

Staff posits that Ameren's ability to use cumulative gas savings to meet the standards set forth in Section 8-104(b) of the Act, combined with the fact that many measures provide both electric and gas savings means the Commission could increase the achievable electric savings by ordering Ameren to spend all available gas energy efficiency funds. By ordering Ameren to adjust its plan so that all available gas funds are used and that the gas funds in excess of what Ameren intended to spend in this plan are targeted towards measures with combined gas and electric savings, Staff asserts that electric savings can be increased even if Ameren does not exceed the spending limits established in Section 8-103(d).

Staff notes that while the gas energy efficiency law does not direct utilities to spend all available funds, it does not prohibit it either. Staff notes that subsection (d) of Section 8-104 of the Act limits expenditures on energy efficiency "implemented in any 3-year reporting period established by subsection (f) of Section 8-104 of this Act, by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period." Staff interprets this subsection of the Act to mean that Ameren is permitted to spend to the 2% limit within the 3-year period. Staff notes that the statute appears to encourage spending to reach more than the minimum necessary to reach the annual incremental savings goals by allowing savings above the goals to accumulate over several years. Staff argues that if the current energy efficiency dockets of ComEd and Ameren on the electric side provide any future indications for gas utility energy efficiency dockets, it is likely that the less expensive measures will be soon exhausted, and it will become more difficult and costly to achieve a given level of gas savings in the future. By ordering Ameren to spend to the limit in its gas plan, Staff opines that the Commission may also prevent or prolong the time until Ameren requests modified gas standards. Staff recommends that the Commission should not be lenient with respect to requests to ease savings goals as allowed by subsection (d) of Section 8-104 of the Act in future proceedings, if Ameren cannot justify why it does not seek to accumulate savings for future years as allowed by the law.

In regard to Ameren's concerns about claiming electric savings from gas only customers or using gas funds to subsidize the efficiency program for electric customers, Staff believes that the subsidization issue can be resolved by determining whether the measures in question are likely to be promoted through gas-only utility energy efficiency portfolios. If so, Staff believes there is no concern about cross subsidization because these measures provide sufficient benefits to gas customers to warrant their inclusion in a gas only energy efficiency portfolio. In response to claiming electric savings, Staff avers it is appropriate for Ameren to claim the electric savings from measures installed in dual gas and electric customer premises as these savings reduce Ameren's deliveries and are incremental to the actions taken by Ameren through its energy efficiency program. While electric savings for measures installed at the premises to gas only customers should not be counted towards Ameren's electric goal as these savings do not affect Ameren's electric deliveries.

b. CUB's Position

Although both Ameren and ComEd both propose similar residential lighting programs, CUB believes that Ameren takes a much more conservative approach in its savings estimates than ComEd. CUB notes that Ameren significantly reduced participation rates for its Residential Lighting Program compared to its previous three-year Plan due to concerns over speculative future effects of EISA. CUB notes that Ameren has decreased the number of CFLs used in its Plan, and proposes to decrease the EMV Net-to-Gross ("NTG") results for the lighting program from an EM&V result of 1.0 to 0.80, 0.60, and 0.40 for PY4, PY5, and PY6, respectively. CUB argues that such an approach is not only unnecessarily conservative, it demonstrates Ameren's reluctance to adopt a Plan that aims to achieve the statutory goals, and as it does not even propose to meet PY4 targets, CUB opines that such an approach should be rejected by the Commission.

While Ameren itself concedes the effect of the EISA on the residential lighting market is unknown, CUB states the total saturation of CFLs in Ameren territory is still estimated to be relatively low and Ameren's proposed total of just over 500,000 CFLs in PY4, including 118,000 specialty CFLs, with reduced numbers for PY5 and PY6, is too low. Even with the proposed new NTG ratios, CUB believes that CFLs would still represent highly cost-effective and low-cost savings.

CUB notes that Ameren's residential lighting program represents only 17% of its overall residential portfolio savings, and although Ameren stated in its Plan that it will make adjustments to program levels if sales turn out to be higher than anticipated, CUB argues that Ameren has scaled down its lighting program too far. CUB is of the opinion that Ameren does not adequately exploit the potential for the relatively low-cost promotion of either standard spirals or specialty CFLs in any of the three program years. As CUB witness Thomas noted, these inconsistencies suggest that Ameren's failure to meet the savings target in PY4 may be the result of not allocating enough funding to cost-effective measures like a Residential Lighting Program. CUB argues the Commission should direct Ameren to recalculate its Plan with an expanded Residential Lighting Program.

CUB notes that Section 8-103(c) of the Act requires Ameren to implement cost-effective demand response measures to reduce peak demand for electricity by 0.1% over the prior year beginning on June 1, 2008, continuing for ten years. Entirely separate from the energy efficiency measures, CUB states this statutory goal focuses on reducing system usage at the point that usage is highest. For purposes of customer programs, peak levels correspond to the highest demand hours in a given year, and this is the point when any reduction in peak demand provides the most value to customers. CUB opines that the General Assembly effectively recognized this value when it includes energy efficiency and demand response as separate requirements.

In its Plan, CUB notes that Ameren calculated demand response MW goals of 4.42, 4.20 and 4.16 respectively, and proposed to meet these goals through a new demand response program, Voltage Optimization, for business and residential customers. CUB states that voltage optimization is a distribution management system program where voltage and VAR control equipment ("Volt/VAR Control") is installed on distribution circuits and used to manage voltage levels on individual feeder lines. In addition, CUB notes that VAR Control can be used to minimize distribution losses associated with reactive power, thereby increasing distribution line losses and reducing system demand, and that Ameren proposed to use this program "no less than 8 times a year for 4 hours per event totaling 32 hours of demand reduction."

While generally supporting the program, CUB opines that the goal of the program should be to operate the electricity distribution system at maximum efficiency without causing any adverse consequences for customers or other system assets. CUB therefore proposes the Commission order Ameren to study the most efficient usage of the installed system and produce annual reports regarding the operation of the system. In the annual reports, CUB believes Ameren should clearly demonstrate the achieved benefits and identify opportunities to use the program more effectively for customers. Since the Voltage Optimization would be a "behind the scenes program," CUB also proposes that Ameren pursue strategies to reduce peak demand through cost effective customer demand response measures such as the Residential RTP program.

CUB notes that Ameren's proposal met with resistance from other Intervenors, namely the AG and ELPC, resulting in Ameren proposing to withdraw the program. CUB states that Staff expressed a preference for a pilot instead of a full program, claiming the benefits from the proposed program were uncertain. While the AG expressed concern that the proposal was not appropriate as an energy efficiency program, and proposed instead that Ameren count peak demand savings from energy efficiency programs, CUB opines that the proposed Voltage Optimization Program is not intended as an energy efficiency measure. CUB states it is intended as a demand response measure, designed to meet an entirely separate set of statutory goals, defined in the statute as "measures that decrease peak electricity demand or shift demand from peak to off-peak periods. CUB believes that Ameren's Plan shows that it can achieve peak demand reductions through implementing the Voltage Optimization Program. CUB argues that the Commission should order Ameren to reinstate this program in the Plan, and monitor the results of the program carefully to ensure that actual demand response savings are achieved.

CUB avers that Ameren's RTP program, PSP, gives Ameren an opportunity to reduce demand for electricity with customer involvement funded by an entirely different source than its Plan. CUB notes that Ameren has expressed willingness to consider Residential RTP as a demand response measure in "future plans" once the program has been evaluated for cost-effectiveness. Noting an evaluation will be conducted early in 2011 to determine if the program results "in net benefits to the residential customers of the electric utility," as required by statute; CUB believes Ameren should work with interested stakeholders to determine if expansion of residential RTP through the Plan proposed here is appropriate. If evaluation results show that Ameren's RTP program is cost-effective, CUB states the Commission should order Ameren to count savings from this program toward statutory demand response goals and to incorporate the RTP program into the Plan.

CUB also believes that use of an on-bill financing program would allow Ameren's residential and business customers to better afford energy efficiency upgrades to their homes or business. Despite the fact that including on-bill financing in its Plan will clearly benefit Ameren's residential and customers, CUB notes that Ameren only mentions the program once in its filing, stating that on-bill financing is under development. CUB believes that Ameren is missing an opportunity by failing to integrate the on-bill-financing program into the Plan, as it would provide an additional source of funding for energy efficiency programs, and could be particularly appropriate for Ameren's proposed Residential Home Energy Performance and Residential Multi-Family Programs. CUB notes that in these programs, the utility is already in a customer's home and should be able to evaluate appropriate energy efficiency investments in a single visit and provide the customer with means to make those investments. Such a program will not only make energy efficiency investments easy for the customer, but CUB believes will provide Ameren with an additional way to leverage another source of funding to help achieve its statutory goals. CUB states that any program costs for on-bill financing, while recoverable under Ameren's Rider EDR, should stay with the program and not be included in calculating Ameren's spending screen.

CUB argues that Ameren could potentially expand either this service or some alternative and perhaps better designed financing strategy, with much larger capital available from third party lenders, as a method to increase program participation and make it easier to capture larger, more comprehensive projects, while lowering costs that need to be recovered from ratepayers. CUB opines that this apparent failure to even consider this proven strategy alone makes clear that Ameren has not explored all options for meeting future goals. Despite encouragement from CUB, AG, ELPC, and NRDC, CUB notes that Ameren indicates it will not offer on-bill financing to customers as part of its Plan because of the unproven ability to attract substantial savings.

While Ameren indicates it could find only two situations that would match the statutory criteria of on-bill financing, CUB avers that the fact that Ameren found any measures meeting the criteria for the on-bill financing program should be reason enough for it to be included in its Plan. While Ameren claims that the General Assembly did not intend the on-bill financing programs and the energy efficiency programs to be integrated, CUB asserts that the proper place for an on-bill financing program, designed to help Illinois consumers afford energy efficient home upgrades, is in a utility's energy efficiency and demand response Plan.

CUB notes that Ameren proposes a Residential Behavior Modification program, wherein participants will receive a Home Energy Report ("HER") that serves as an educational and motivational tool to reduce both electricity and natural gas consumption. CUB states that while designed as a pilot program, Ameren estimates it will reach 50,000 customers for each Plan year and annual savings are estimated at 495,908 gas therms, 12,238 MWh and peak demand reductions of 2.8 MW. CUB supports this innovative program, and states that ELPC witness Crandall testified that if Ameren expanded this program to match, proportionally, the annual savings associated with the program would increase from 12,238,000 kWh to 27,772,714 kWh and Ameren would add roughly 15.5 million kWh per year of savings.

While several intervenors express concern that savings are not persistent beyond one year in behavior change programs, CUB asserts that studies show that energy savings behaviors persist over time, and the Commission should support Ameren's attempt to achieve energy savings from innovative programs like Residential Behavior Modification. CUB notes that Ameren has proposed an integrated electric and natural gas program, which CUB believes is entirely appropriate not only for dual-fuel customers but for a dual-fuel utility, such as Ameren. CUB recommends that Ameren expand its current plan to utilize a third party contractor to incorporate other third party administered plans similar to ComEd's.

While Ameren agrees, noting the use of third party administrators that have a proven record of delivering energy savings, CUB notes Ameren stops short of committing to soliciting new ideas from third-party administrators through an RFP process. CUB argues that the solicitation of ideas from third-party administrators can introduce benefits ranging from increased stakeholder involvement to the introduction of new ideas in both technologies and delivery mechanisms. With Ameren's energy efficiency portfolio projected to become over significantly less cost-effective when CFL programs are phased out, CUB states that a significant increase in cost-effective program models is necessary.

c. AG's Position

While Ameren is requesting the Commission approve a reduction of the electric energy savings goals, the AG believes that Ameren could revise its portfolio to sufficiently meet PY4 and PY5 statutory goals. Additionally, the AG notes that the PY6 goals can be revisited after the legislature has an opportunity to consider the statutory reports and whether modifications to the Act are appropriate.

The AG notes that many jurisdictions are striving to increase the acquisition of cost-effective efficiency resources, including using new and innovative approaches that leverage outside capital, develop public-private partnerships, access federal grants, and other alternatives, and it appears that the Commission should direct Ameren to do the same. Even without leveraging additional outside funds, the AG believes that Ameren has taken a modest approach to designing its Plan 2 electric programs, arguing that Ameren's portfolio does not fully incorporate a number of alternatives that could increase the rate of savings starting in PY4.

The AG argues that Ameren should ensure that it maximizes appropriate contributions from gas ratepayers in all joint programs, as gas ratepayers could fund a greater portion of incentives for those measures that save both electricity and gas, so long as the total benefits accruing to gas ratepayers exceed its contributions. Additionally, the AG suggests that Ameren reduce administrative, marketing and research and development ("R&D") funds from the full 3% of budget limit for marketing and R&D, as this spending should be a lower priority until it is clear whether the rate impacts will be modified. The AG also urges a greater use of either on-bill or off-bill financing to support its programs while lowering the amount of rebate funds necessary to meet participation goals

The AG suggests there should also be a shifting of resources from higher cost programs to lower cost programs, as Ameren's current proposal allows flexibility to undertake these shifts as a way to meet goals if needed. In particular, the AG argues that Ameren should significantly increase its efforts at promoting specialty CFLs, which are not affected by federal standards and still offer large and very inexpensive savings. The AG further proposes that Ameren aggressively pursue grant funds, partnerships, and other leveraged resources, as appropriate and available, as well as consider upstream program models that can reduce total costs per kWh saved for future portfolio modifications.

The AG urges the Commission to require Ameren to make a compliance filing that would include a revised Plan within 30 days after the Final Order is issued in this case. The AG believes that this filing should include the recommendations discussed by the AG, as well as the recommendations provided by NRDC and ELPC.

d. NRDC-ELPC's Position

NRDC-ELPC notes that Ameren's energy efficiency plan falls short of the statutory target for PY4 by 59,000 MWh of potential savings, which represents roughly 20% of the savings that would be realized under the statutory target, falls even further short of the statutory target for PY5 by 154,000 MWh, or nearly 40%, and by PY6 Ameren proposes to achieve less than half of the statutory goal, falling short by 334,000 MWh or 60% of the target.

While Ameren argues that it cannot reach the statutory target without exceeding the spending limit, NRDC-ELPC asserts that, Ameren fails to present sufficient evidence that its portfolio is maximized to achieve the highest level of savings achievable with the available funds. While Ameren presents a benchmarking analysis to show that it cannot meet the Act's unmodified savings goals, NRDC-ELPC suggests that the analysis shows that utilities have been known to achieve savings targets in the same range as the statutory targets Ameren faces, at costs that are consistent with the amounts Ameren may spend under the rate impact caps.

NRDC-ELPC opines that Ameren has substantially underestimated the level of savings it could achieve within the limited budgets, and notes that various witnesses have offered no fewer than nine distinct programmatic changes, each of which would increase Ameren's total savings within its allowed budget. Given the sheer number and variety of strategies that Ameren failed to consider before concluding that the targets were out of reach, NRDC-ELPC suggests the only appropriate response from the Commission would be to send the plan back to Ameren and required it to redesign its portfolio to achieve greater levels of savings.

NRDC-ELPC suggests that a closer look at Ameren's benchmarking analysis shows not only that the statutory goals are achievable, but that similar goals are being achieved by utilities at roughly the same cost per first-year kWh savings that Ameren has to spend within its rate impact caps. NRDC-ELPC argues it is not appropriate to compare the cost per unit savings for utilities that are achieving a substantially higher savings target as a percentage of sales, because the higher savings goals would tend to drive a different mix of programs that could increase their cost of first-year kWh savings. If, instead, one compares only those portfolios analyzed in the benchmarking study that are achieving savings at levels closer to Ameren's PY4 statutory goal (i.e., between 0.8 percent of sales and 1.2 percent of sales), NRDC-ELPC notes the average cost per first year kWh was $0.18, well within Ameren's estimated cost limit of $0.191 per first-year kWh. Moreover, if one looks at only those portfolios that were achieving savings at a level closer to Ameren's PY5 target of 1.0% of sales, NRDC-ELPC suggests the average spending per first-year kWh was $0.15, within Mr. Weaver's estimated limit of $0.153.

NARDC-ELPC also opines that Ameren is including significant savings from a relatively untested behavior modification program that has substantially lower first year savings costs than most programs and was not likely to be included in any of the portfolios analyzed in the benchmarking study, while Ameren also has the advantage of offering combined gas and electric programs, which should reduce administrative costs relative to electric-only utilities.

NRDC-ELPC concedes that it is challenging to meet the increasingly aggressive targets with a static budget, and notes that both benchmarking exercises demonstrate that many utilities have higher budgets than Ameren has at its disposal. NRDC-ELPC agrees that it does not appear that the target for PY6 is within Ameren's reach without additional funds, however, for PY4 and PY5 the data demonstrates that it is not unheard of for utilities to have achieved similar savings targets within the allowed funding levels, and notes that Ameren's plan to fall dramatically short, achieving only 56% of the statutory target's savings over the three-year plan is unjustified.

NRDC-ELPC avers that various witnesses made a total of nine separate recommendations for program design changes that could increase the amount of savings achieved within Ameren's energy efficiency rate impact limitations, and while NRDC-ELPC are not suggesting the Commission order Ameren to adopt a specific combination of these recommendations, the evidence does appear to show that Ameren has not met its burden to demonstrate that it has exhausted all opportunities for additional cost-effective savings and cannot meet its statutory targets. NRDC-ELPC requests that the Commission order Ameren to submit a revised plan that achieves the PY4 and PY5 goals.

NRDC-ELPC suggests that the various recommendations for Ameren include greater reliance on standard spiral CFLs, promotion of specialty CFLs, promoting CFLs into hard-to-reach markets, use of upstream commercial lighting, exploring additional financing alternatives, reduction of portfolio-level administrative costs, increase spending of gas program funds that save both gas and electricity, maximize the savings from the Energy Performance and Residential Moderate-Income Direct Install programs, and eliminate the Voltage Optimization Program to free up funds for additional savings.

NRDC-ELPC suggests that Intervenors are not able within the available time afforded by this process to redesign Ameren’s portfolio to meet the statutory targets, but neither should it be the responsibility of Intervenors to do so. The evidence presented by the parties, NRDC-ELPC argues, demonstrates that Ameren has failed to evaluate a large number of strategies that individually or in combination could result in a plan that achieves the statutory savings targets within the limits of the rate impact cap.

e. IPA's Position

The IPA states that “Demand-response” is defined in Illinois as “measures that decrease peak electricity demand or shift demand from peak to off-peak periods.” 20 ILCS 3855/1-10. In its September 30, 2010 filing, the IPA notes that Ameren proposed a single DR program its refers to as a “Voltage Optimization” program, in which Ameren would install “Volt/VAR” devices to manage voltage and reactive power through its distribution and feeder systems. The IPA avers that the "Volt/VAR" devices are not actual demand reponse devices, but instead would help Ameren maintain a flatter distribution circuit profile while still delivering to customers acceptable voltage at the end of the circuit. The IPA notes that Ameren indicates this program would permit Ameren to control loads eight times per year for four hours per event, resulting in 32 hours of load reduction. However, the program is intended to be "behind the scenes" with "no detectable impact to households" and will cause no change in behavior by the customer. The IPA believes the evidence shows that if implemented, the impact should reduce annual MW load by 4.5 MW per year.

The IPA asserts that most Intervenors argue against the Voltage Optimization proposal, while Staff recommended that that the Commission reject Ameren’s proposed DR program, but order Ameren to conduct a pilot of the Voltage Optimization Program to determine if the program actually works. The IPA notes that in response to this criticism, Ameren revised its proposal and removed the Voltage Optimization Program from its proposed plan and increased its energy efficiency budgets and targets accordingly.

The IPA states that the net result of Ameren’s revision is that it proposes no DR program at all for the period from June 1, 2011 to May 31, 2014, and therefore Ameren’s proposed energy efficiency and demand response plan is not only deficient, but unlawful and contrary to Section 8-103(c). The IPA also opines that there is no evidence in the record that the Voltage Optimization Program is an adequate demand response program that complies with Ameren's obligation to reduce customer demand during peak load, or to shift demand from peak to off-peak.

Some parties have suggested that Ameren be given credit for this EE measure in satisfying its obligations under Section 8-103(e). Mr. Mosenthal asserts that capturing peak savings through the residential EE programs can be viewed as meeting the statute's requirements for incremental DR resources of 0.1% per year if Ameren can demonstrate that the programs actually results in a decrease in peak demand or a shift of demand from on-peak to off-peak periods. However, Mr. Mosenthal does not provide information to demonstrate that the Voltage Optimization Program does indeed reduce demand. In fact, Ameren's evidence is to the contrary. The Volt/VAR devices allow Ameren to control the delivery of supply, and to provide "a flatter distribution circuit profile" while still delivering to customers "an acceptable voltage at the end of the circuit." The devices do not actually modify demand behavior; Ameren acknowledges that the devices are installed "behind the scenes," are not detectable by the customer, and result in no change in behavior by the customers. The IPA asserts that Ameren's proposed plan therefore contains no DR measures.

The IPA opines that Section 8-103(f) provides that if Ameren's does not propose a plan that satisfies the utility's portion of the required energy efficiency standards and the required demand response standards, the Commission may enter an order disapproving the Plan. If the Commission disapproves the plan, the IPA asserts that the statute requires that the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily.

Should the Commission find that Ameren has failed to implement an energy efficiency program approved by the Commission under Section 8-103(b), the IPA argues that Section 13-801(f) requires the Commission to transfer the responsibility for implementing the energy efficiency measures to the IPA. The IPA notes that this transfer of responsibility is only for energy efficiency savings required under Section 13-801(b); and does not specifically mandate that the responsibility to procure demand response savings be implemented by the IPA. The IPA asserts that Section 16-111.5(b)(3) does require the IPA to provide a plan for meeting the expected load requirements that will not be met through preexisting contracts.

For the current and previous procurement cycles, the IPA notes it has argued that Section 16-111.5(b)(3) requires the IPA to conduct a competitive bid for demand response in Ameren's territory; however, the Commission has so far rejected the IPA's efforts to comply with its statutory mandate under this Section. Given that Ameren no longer plans any demand response program for Plan 2, the IPA believes the Commission should now authorize the IPA to conduct a competitive bid for demand response. If the Commission does not authorize the IPA to conduct a competitive procurement event under Section 16-111.5, the IPA requests that the Commission reject Ameren's plan, and order Ameren to submit a revised plan within 30 days that includes a viable DR program that satisfies is obligations under Section 8-103(c).

Further, the IPA requests that the Commission authorize the IPA to conduct a competitive procurement to solicit bids from third-party demand response providers that will satisfy Ameren's minimum demand response obligations under Section 8-103(c), or in the alternative, order Ameren to submit a revised draft plan that includes a viable demand response program that satisfies Section 8-103(c).

f. Commission Analysis and Conclusion

The Commission first notes that Ameren acknowledges that the initial plan which it proposed will require the Commission to modify the statutory savings targets for energy savings in Section 8-103 of the Act in light of the rate impact limitations contained in the legislation. Ameren explains that the rate impact limitations contained in the legislation prevent it from meeting the statutory savings requirements and, in fact, the Commission notes the proposed energy savings by Ameren go down each plan year.

Following the submission of this plan, Staff and the various Intervenors made various suggestions on how Ameren could achieve greater savings, while still complying with the rate impact provisions of the statute. It appears to the Commission that most parties acknowledge that Ameren will be unable to meet the required savings, at least in PY5 and PY6, due in part to the expected spending staying virtually flat, while the required savings continue to increase. Based in part on these various suggested changes, Ameren has proposed a modified plan, which the Commission must now consider. The Commission notes that its options in this proceeding by statute are to either accept Ameren's modified plan which incorporates reduced energy efficiency savings; or reject the modified plan, and within 30 days describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns. A third path, which Ameren and some other parties suggest, would be for the Commission to direct Ameren to make a compliance filing incorporating the provisions of this Order.

The Commission begins its analysis by looking at what the statute requires of Ameren in its energy efficiency plans for the years in question. The statute in question calls for energy savings of 0.8% of energy delivered in the year commencing June 1, 2011 ("PY4"); 1% of energy delivered in the year commencing June 1, 2012 ("PY5"); and 1.4% of energy delivered in the year commencing June 1, 2013 ("PY6"). Ameren indicates that this would translate into required electric energy efficiency savings of 309,732 MWh in PY4, 392,640 MWh in PY5, and 557,787 MWh in PY6, while it appears that Ameren proposes that the total savings standard be modified to 250,551 MWh in PY4; 238,372 MWh in PY5; and 223,540 MWh in PY6.

Before analyzing the various proposed changes suggested for Ameren's modified plan, the Commission would like to express its concerns over the manner in which these efficiency dockets proceed. It appears that all the parties express some level of frustration over the expedited schedule they are presented with, and the inability to fully discuss the issues and various proposals. The Commission appreciates this concern, but recognizes that until there is a change made by the Legislature, the parties must accept the hand they are dealt. The Commission is concerned with some of the proposals presented by the parties during this proceeding, and the lack of detail provided on what impact the adoption of the proposal should have on the Ameren plan. The Commission recognizes that there is a SAG which involves the parties to this docket, and suggests that perhaps there is the place to determine what impact a proposal would have if adopted, and then to present that to the Commission. The Commission is of the opinion that it is difficult to determine whether to adopt a party's position when there is little or no evidence on the cost of that position, and the accompanying savings that would be accomplished. While the Commission recognizes that it is not Staff or an Intervenors responsibility to craft a plan for Ameren, it is not very helpful to the process to suggest a change, without explaining the impact of that change on either the cost or savings side of the equation. The Commission directs Ameren to meet with the SAG before submitting its modified Plan in a compliance filing to this docket in order to determine the impact that Staff and Intervenors' suggestions have on the cost and savings side of its revised Plan, as well as come to a consensus regarding the NTG ratio values to deem for the Plan.

The Commission will next address the issue of the Voltage Optimization Program, which Ameren initially proposed to satisfy the demand-response requirements of Section 8-103. Ameren calculated that the statute required demand-response goals of 4.42 MW, 4.20 MW, and 4.16 MW for PY4 through PY6 respectively. Various Intervenors suggested that Ameren should abandon the plan, and divert the planned expenditure to other energy efficiency programs, while Staff suggested that Ameren develop a pilot program to test the benefits of the Voltage Optimization Program. CUB recommends that the Commission direct Ameren to reinstate that program, and monitor the results to ensure that actual demand-response savings are achieved. The IPA argues that as Ameren is not proposing an acceptable plan, the Commission should transfer the responsibility of implementing the energy efficiency programs to the IPA. The IPA also notes that it has attempted to conduct a competitive bidding process for demand response in the procurement proceedings for the Ameren service territory; however, the Commission has to date denied those requests. Given that, the IPA requests that the Commission now authorize the IPA to acquire demand response for Ameren, as Ameren has failed to do so. If the Commission does not authorize the IPA to acquire demand response, then the IPA suggests that the Commission reject Ameren's plan and direct Ameren to submit a revised plan within 30 days which includes a viable demand-response program.

Ameren now argues, essentially, that it will meet the demand response requirements of Section 8-103(c) simply by implementing energy efficiency measures pursuant to Section 8-103(b) of the Act. At this time, the Commission is not convinced that this interpretation of the Act is correct.

It is the Commission's understanding that for ComEd, PJM acquires the necessary demand response through the markets that it administers and the Reliability Pricing Model ("RPM") auction process. This issue was addressed in the last procurement proceeding, Docket No. 09-0373 and is also currently an issue in the current procurement proceeding, Docket No. 10-0563. The Commission is not aware that MISO or Ameren have a similar mechanism for acquiring demand response. Nevertheless, the record of this proceeding does not support the proposition that cost-effective demand response measures are available to Ameren at this time. The Commission fully expects Ameren to endeavor to identify cost-effective demand response measures that might be incorporated in its next energy efficiency and demand response Plan and discuss these with the SAG.

The Commission is of the opinion that it would be appropriate to institute a pilot of the Voltage Optimization Program, to determine what the benefits would be of a wider adoption of this program. The Commission agrees with Staff that the pilot should include testing not only the demand response capabilities of the program, but also the energy efficiency capabilities, if implemented on a continuous basis. The Commission suggests Ameren conduct a pilot of the Voltage Optimization Program on a heavily loaded feeder that is able to support a significant reduction in voltage in order to maximize the cost-effectiveness of the pilot. The Commission further suggests Ameren design a number of tests using industry best practices that can be used to ensure the demand response capabilities of the pilot program will actually work. The Commission believes that the adoption of a pilot program, with the remainder of the funds directed toward greater energy efficiency, along with other possible demand-response measures, will be appropriate at this time. With these measures in place, the Commission does not find it necessary at this time to direct the IPA to acquire demand response, although this may become necessary in the future.

The parties also mention Ameren's real-time pricing program, PSP, as an opportunity to reduce demand for electricity. The Commission understands that an evaluation of this program will occur in early 2011, but it is not yet clear whether this program, assuming it is shown to be effective, should be counted toward the demand-response goals. The Commission directs Ameren to continue to keep the SAG and the Commission apprised of the effectiveness of its PSP program.

The Commission notes that Ameren also agrees to explore the use of on-bill financing to increase energy efficiency measures, which the Commission finds to be appropriate. It appears from the evidence that the benefits of on-bill financing are still to be determined for the most part, but the Commission believes that Ameren should avail itself of any reasonable measures to meet its required savings. While Ameren concludes that there are limited programs suitable for on-bill financing, the Commission urges Ameren to pursue this program further.

As for the parties' varied suggestions that Ameren avail itself of outside financing, such as TIF funding, or ARRA money, it appears to the Commission that Ameren has pursued those avenues, and has had little success. While the Commission encourages

Ameren to continue to pursue innovative funding sources to leverage its energy efficiency financing, it does not appear appropriate, or even possible, to order Ameren to obtain outside funding, when the final decision is outside the control of the Commission and Ameren.

The Commission also views favorably Ameren's proposed Residential Behavioral Modification program, and its potential value both as an educational tool and a motivational tool to encourage electric and gas savings. The Commission conclusions regarding this issue appear later in this Order.

Of the various other suggestions made to improve Ameren's plan, the Commission does find merit in continuing, and even increasing Ameren's use of CFL light bulbs to achieve energy efficiency savings. While Ameren expresses concern over recent Federal legislation, other parties express their opinion that Ameren's concerns are exaggerated. The Commission agrees that the increased use of CFLs, especially specialty CFLs, represent cost-effective and low-cost savings. It appears appropriate to the Commission to direct Ameren to adopt a residential light program more akin to that adopted in previous plan years, taking into account the reduced NTG ratios suggested by Staff, and agreed to by Ameren as discussed later in this Order.

The Commission finds that the suggestion with the greatest potential to allow Ameren to maximize its electric energy efficiency gains is the suggestion that Ameren use funds not currently budgeted for use in the gas efficiency program, by allocating them to joint gas and electric efficiency programs. Staff and various Intervenors point out that unless a change is made in Section 8-103, it appears that it will become increasingly difficult for Ameren to meet the Act's unmodified energy efficiency goals, and the Commission notes that Ameren does not presently plan on achieving the unmodified goals during any of the three years of this Plan. The Commission believes that Ameren's stated concerns over subsidization of electric customers by gas customers can be addressed in the fashion suggested by Staff. The Commission finds that the potential benefit to all customers on the energy efficiency front, both gas and electric, warrant Ameren to develop a plan to spend excess gas energy efficiency funds on joint gas-electric savings. The Commission therefore orders Ameren to spend 75% of the entire natural gas spending limit, to the extent possible. Funds in excess of those needed to achieve Ameren's natural gas savings goals, as newly calculated and including transportation customers, shall be spent on joint gas-electric savings, to the extent possible.

The Commission agrees with Staff that Ameren should be allowed to fund a measure resulting in both gas (therm) and electric (kWh) energy savings, and charge the full incentive cost of the measure to the gas portfolio, so long as the measure results in sufficient benefits to gas customers that it is likely to be provided by a gas-only utility. The Commission directs Ameren to claim all electric (kWh) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no electric incentive has been paid, as these savings reduce Ameren's deliveries. In addition, the Commission directs Ameren to claim all gas (therm) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no gas incentive has been paid, as these savings reduce Ameren's deliveries. However, electric (kWh) savings for measures installed for Ameren's gas-only customers should not be counted toward Ameren's electric savings goal as these savings do not affect Ameren's electric deliveries.

Likewise, gas (therm) savings for measures installed for Ameren's electric-only customers should not be counted toward Ameren's gas savings goal as these savings do not affect Ameren's gas deliveries. The Commission directs Ameren to adjust its proposed modified incremental percent of energy delivered standards, and corresponding energy savings targets to reflect these changes and include these adjustments in its compliance filing in this docket.

The Commission finds that evaluating cost-effectiveness on a portfolio level is necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate. The Commission concludes it is appropriate to apply the TRC test at the portfolio level, but Ameren Illinois and the DCEO should be allowed to apply it at the measure or program level if they so choose. The Commission also finds Ameren's proposal to apply the TRC test at the measure level for planning purposes, if it chooses, and apply any ex post TRC test at the portfolio level is reasonable and is hereby adopted. Further, the Commission declines to micromanage Ameren Illinois by ordering it to allocate more or less money to individual programs that Intervenors' claim are more cost-effective.

Consistent with its previous energy efficiency Order, the Commission agrees with its previous finding that irrespective of the fact that Ameren's Plan may be a comprehensive three-year Plan, the spending limits are based on projections, which, necessarily, need to be re-examined, as they can change from year to year, based on the previous year's figures. The previous year's figures, upon which, those calculations must be made, cannot be known years before the dates enunciated in the statute have occurred. Consistent with the Final Order in Docket No. 07-0539, Ameren is directed to recalculate its projections on an annual basis. (See Final Order, Docket No. 07-0539, Order at 22-23, (Feb. 6, 2008))

Following a review of the party's arguments, and taking into account the Commission's findings presented here, it appears to the Commission that Ameren could achieve additional savings and achieve higher modified goals under Section 8-103 of the Act. The Commission finds, and Ameren acknowledges, that the revised plan does not contemplate meeting the energy savings goals expressed in Section 8-103(b). The Commission recognizes that Ameren indicates that it is constrained by the spending limitations imposed by Section 8-103; however, the Commission believes that a revised plan could be submitted by Ameren, implementing the findings expressed in this Order, which would encompass greater energy savings, while complying with the spending limitations. The Commission recognizes that the statute imposes an ever greater energy efficiency savings requirement on Ameren each year, without a proportionate increase in funding. The Commission believes that this will require Ameren and the various other stakeholders involved in this process to develop innovative processes to leverage the available funding to implement the will of the Legislature. The Commission believes it is appropriate to direct Ameren to make a compliance filing within 30 days of the date of this Order, as Ameren suggested in its Brief would be appropriate. The Commission directs that this compliance filing contain a revised Energy Efficiency and Demand Response Plan, which contains terms and provisions consistent with and reflective of the findings and determinations contained in this Order.

B. Gas Savings Goals

1. Statutory Language

Like Section 8-103, Section 8-104 sets requirements for gas utilities and integrated gas and electric utilities like Ameren. Such utilities must "implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements . . . by meeting the annual incremental savings goal in the applicable year or by showing that total savings . . . were equal to the sum of each annual incremental savings requirement . . . ." 220 ILCS 5/8-104(c). For Plan cycle 2, these goals are: a 0.2% increase by May 31, 2012 for PY4; an additional increase of 0.4%, for a total savings of 0.6% required for PY5, and an additional increase of 0.6%, for a total savings of 1.2% required for PY6. 220 ILCS 5/8-104(c). Also like Section 8-103, the gas savings goals are subject to a statutory spending limit, and utilities must "limit the amount of energy efficiency implemented in any 3-year reporting period . . . by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period." 220 ILCS 5/8-104(d).

In addition, utilities must use 75% of the available funding and allocate the remaining 25% to the DCEO, which must achieve no less than 20% of the natural gas savings requirements. 220 ILCS 5/8-104(e). A minimum of 10% of the gas portfolio must also "be procured from local government, municipal corporations, school districts, and community college districts." 220 ILCS 5/8-104(e).

The Commission notes that utilities must:

(1) Present specific proposals to implement new building and appliance standards that have been placed into effect.

(2) Present estimates of the total amount paid for gas service expressed on a per therm basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

(3) Coordinate with the DECO to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in

Illinois from households at or below 150% of the poverty level. Such programs shall be targeted to households with incomes at or below 80% of area median income.

(4) Demonstrate that its overall portfolio of energy efficiency measures, not including programs covered by item (4) . . . are cost-effective using the [TRC] test and represent a diverse cross section of opportunities for customers of all rate classes to participate in the programs.

(5) Demonstrate that a gas utility affiliated with an electric utility that is required to comply with Section 8-103 of this Act [220 ILCS 5/8-103] has integrated gas and electric efficiency measures into a single program that reduces program or participant costs and appropriately allocates costs to gas and electric ratepayers. DCEO shall integrate all gas and electric programs it delivers in any such utilities' service territories, unless DCEO can show that integration is not feasible or appropriate.

(6) Include a proposed cost recovery tariff mechanism to fund the proposed energy efficiency measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

(7) Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and DCEO's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and DCEO's portfolios of measures and broader net program impacts and, to the extent practical, for adjustment of the measures on a going forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given 3-year period.

220 ILCS 5/8-104(f)(2)-(8).

Additionally, "no more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-104(g).

2. Ameren's Plan

a. Ameren's Position

Ameren suggests that its Plan 2 meets every requirement in Section 8-104, and suggests that no Party disputes that Plan 2 is designed to comply with the Act or that it achieves the Act's energy savings targets, and in fact will achieve savings beyond the statutory efficiency targets without raising rates to the statutory limit, all in a cost-effective manner.

Ameren states that it calculated its therm savings energy efficiency goals by applying the percentage reductions to sales volumes consumed by customers served under Rider S - System Gas Service, which corresponds to approximately 1.8, 3.6 and 5.3 million therms for PY4, PY5, and PY6, respectively, for the entire Ameren portfolio (inclusive of the DCEO portion), for a total of approximately 10.7 million therms. Ameren notes that DCEO is responsible for 20% of the gas savings, which means Ameren is responsible for achieving approximately 1.4, 2.8 and 4.2 million therms, or approximately 8.5 million therms over three years. Ameren notes that its Plan 2 proposes the achievement of 3.0, 3.1, and 3.1 million therm savings for PY4, PY5, and PY6, respectively, for the Ameren allocated portion of the portfolio, for a total of approximately 9.3 million therms, comfortably exceeding the statutory requirement.

Ameren states the statutory spending limit corresponds to $18.5, $18.9 and $19.2 Million each year for the entire portfolio (inclusive of DCEO), while the Ameren portion of the portfolio costs are $6.9, $7.7 and $8.4 Million for PY4, PY5, and PY6, respectively, for a total of approximately $23.0 Million. Ameren asserts it has fulfilled its statutory requirement under Section 8-104(f)(1), and notes that Staff agrees.

Ameren notes that Plan 2 also presents specific proposals to implement new building and appliance standards that have been placed into effect, in accordance with Section 8-104(f)(2), and states that Staff agrees, and no Party disputes, that this requirement is satisfied.

Ameren provides estimates of the amount paid for gas service expressed on a per therm basis pursuant to Section 8-104(f)(3), noting that customers will pay "0.79¢/therm, 0.84 ¢/therm, and 0.89¢/therm for PY4, PY5, and PY6. Ameren asserts that Staff concurs that Plan 2 has estimates of the total amount paid for gas service expressed on a per therm basis associated with the proposed portfolio of measures, and no other Party disputes that Ameren has met this requirement.

In accordance with Section 8-104(f)(4), Ameren contends it coordinated with DCEO to present a portfolio of gas measures proportionate to the share of utility revenues coming from households at or below 150% of the poverty level; and target such measures to households with incomes at or below 80% of the area median income. Staff agrees that Plan 2 coordinates with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level.

Ameren states that all measures, excluding those implemented by the DCEO for low-income customers, were screened using the TRC test. Ameren opines that Plan 2 includes only measures and programs that are cost-effective under all applicable instances of the TRC test, i.e.: the overall portfolio level, each overall program level, and the individual measure-level assessments of energy efficiency or demand response measures. Ameren claims it has demonstrated that its overall portfolio of energy efficiency measures, are cost-effective using the TRC test as required by Section 8-

104(f)(5). As with the other statutory requirements, Ameren notes that neither Staff nor any Intervenor disputes that Plan 2 represents the required diverse cross-section of opportunities.

Ameren calculates TRC retrospectively at the program and portfolio level, but for planning purposes, Ameren has chosen to apply the TRC test at the measure level. That is, for planning purposes, all measures and programs proposed for Ameren's energy efficiency portfolio Plan 2 are considered cost-effective as they have been screened to satisfy the TRC test. However, Ameren agrees with the Commission's analysis of the issue from Docket No. 07-0539, wherein the Commission concluded, that calculation of the TRC test at the portfolio level provides utilities with greater flexibility to ensure that measures with less short-term energy savings value, but greater value over several years, will be included in any overall portfolio of measures and programs. Ameren says the Commission's conclusion to apply the TRC test at the portfolio level, but to allow Ameren and the DCEO to apply it at the measure or program level "if they so choose" is reasonable and should be retained.

Additionally, pursuant to Section 8-104(f)(6), Ameren notes that it has filed an integrated energy efficiency plan in order to deliver a flexible portfolio capable of serving diverse market segments, noting Plan 2 includes administrative synergies for program delivery, increased energy benefits, more cost-effective measures, and operational benefits for trade allies in the field. Ameren states Staff again agrees that Plan 2 complies with the integrated utility provision of Section 8-104.

Pursuant to Section 8-104(f)(7), Ameren states it included in its filing a rider to fund the proposed energy efficiency measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs. Ameren notes that it proposes several changes from the rider that was approved in Docket No. 08-0104, namely, that rather than Rider GER only applying to Residential and Small General (GDS 1 and GDS 2) customers, to comply with Section 8-104(c) of the Act and allow for equitable recovery of program expenditures, Ameren now proposes three rate groups: Residential (GDS 1), Small Commercial and Industrial (GDS 2 and GDS 3), and Large Commercial and Industrial (GDS 4, GDS 5, and GDS 7). Ameren indicates that a separate cost recovery charge would apply to each rate group. Ameren indicates that Staff concluded that the proposal to recover its energy efficiency costs from the three rate groups was appropriate and should be approved.

Ameren states that Section 8-104(f)(8) requires certain EM&V procedures, and asserts that Plan 2 addresses these as the consultant provides for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of natural gas measures and the DCEO's portfolio of natural gas measures, as well as providing an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and the DCEO's portfolios of measures and broader net program impacts. Ameren claims that per the Act, the resources dedicated to the evaluation do not exceed 3% of portfolio resources in any given 3-year period.

While Intervenors object to certain parts of Ameren's proposed EM&V framework, Ameren states that no Party argues that Plan 2 fundamentally satisfies the EM&V requirement, and notes that no more than 3% of portfolio costs were allocated to breakthrough equipment and devices, as Section 8-104(g) requires. Ameren recommends that the Commission find that Ameren's Plan 2 meets all of the statutory requirements of Section 8-104.

b. Staff's Position

Staff notes that Subsection 8-104(c) of the Act states, in part:

> (c) Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage.

Staff claims the subsection (m) referenced in the above excerpt deals with certain customers who, if their applications are approved by the Department, are exempt from paying into and directly participating in the efficiency programs offered by the utility. Thus, aside from the subsection (m) exclusion, Staff avers that the Act clearly provides that the basis for computing natural gas savings requirements begins with the total amount of gas delivered to retail customers.

Notwithstanding the clear language of 8-104(c) of the Act, Staff notes that Ameren chose to compute its natural gas savings goals based, not on the total amount of gas delivered to retail customers, but only on the gas delivered to that subset of retail customers who purchase their gas directly from Ameren. By doing this, Staff claims that Ameren excluded from its calculation all gas delivered to those relatively large Ameren customers who purchase their natural gas from alternative gas suppliers. Staff disagrees with Ameren's exclusion of gas purchased by transportation customers, resulting in different gas savings goals computed by Ameren and Staff, as shown in the following table:

Gas Savings Goals (Therms per Plan Year)

Plan Year	Company	Staff
PY4	1,788,394	2,351,808
PY5	3,576,788	4,703,615
PY6	5,365,183	7,055,423

c. CUB's Position

CUB notes that Ameren's Plan 2 meets and exceeds the statutory natural gas savings targets using less funding than the utility has at its disposition under the spending limit. CUB asserts that the amount of funding Ameren has available under the spending limit is $18.5, $18.9 and $19.2 Million per Plan year, while Ameren proposes to spend $9,496,961, $10,262,306 and $10,930,332 for each Plan year respectively. CUB claims that Staff suggests that Ameren spend all funding it has available for natural gas programs even though Ameren is able to meet statutory targets effectively without it, however Ameren rejected this approach, claiming the statute does not direct utilities to spend all available funds and actually provides a basis for limiting funds. Instead, CUB states that Ameren has requested flexibility to spend more than the budget proposed in its Plan to achieve savings targets. CUB agrees with Ameren that it is not required to spend all the amounts it is allowed to collect under the Act, and recommends that the Commission reject Staff's proposal, and instead grant Ameren the flexibility it has requested provided the Company provides information to the SAG on any major changes to its programs that result in spending more of its natural gas budget.

d. AG's Position

The AG notes that the gas energy efficiency portfolio is entering its first mandatory 3-year plan period under the Act, and thus lags the electric efforts by 3 years.[1] As a result, the AG states that electric statutory goals reflect 0.8%, 1.0% and 1.4% per year incremental savings, respectively; while gas goals are much lower at 0.2%, 0.4% and 0.6%, respectively. In addition, the AG claims that Ameren is allowed to meet its gas goals by simply ensuring that cumulative 3-year plan savings meet the sum of each individual year's goals. Another significant difference the AG notes is that Ameren's gas spending cap is set at the ultimate maximum of 2% of revenue for each year, even during the first 3-year plan.

The AG acknowledges that Ameren has already been implementing a voluntary gas program prior to the start of the first EEP 3-year plan, and should thus be well-positioned to capture savings in PY4 that exceed its statutory 0.2% goal. The AG supports Ameren's intent not to pull back its gas program efforts, which would result in disruption to the market and abandonment of cost-effective savings the Ameren companies are well positioned to capture in PY4. However, because of the cumulative goals, the AG states that Ameren proposes to effectively hold its gas programs at a relatively constant level throughout the three years and not ramp up over time.

The AG asserts that Ameren does not plan to meet PY5 and PY6 goals, while spending less than half the money available to it. Although such an approach technically meet the requirements of Section 8-104(c), the AG does not believe that this

[1] The Commission notes that Ameren had previously entered into a voluntary three year plan, therefore this mandated plan is referred to as Plan 2, and the three years contained in Plan 2 are referred to as PY4, PY5, and PY6.

tactic is in the best interests of ratepayers. If Ameren pursues this strategy, the AG claims it will end the period with no greater depth of savings than it started with, however, the PY7 goal will be significantly higher, more than twice the amount of savings Ameren plans to capture in PY6. As a result, the AG does not believe that Ameren will be well-positioned to meet these more difficult PY7 goals, let alone maintain a ramp up through the PY7 through PY9 period, wherein goals will grow to roughly 12.6 million therms, or about four times Ameren's planned depth of savings for PY6.

To correct this "short-sighted" gas savings planning approach, the AG recommends that the Commission, at a minimum, approve Ameren's first year gas goal and budget, but direct Ameren to significantly ramp up its savings and spending goals in PY5 and PY6 to at least ensure that Ameren captures an incremental savings in PY6 of 0.6% of load. The AG opines that this will still allow Ameren to not spend all of its available funds, while ensuring a reasonable ramp up and providing ratepayers with PY6 savings consistent with that year's goal.

In addition to better preparing Ameren for the future savings goals ramp-up and providing additional net benefits to gas ratepayers, the AG is of the opinion that increasing the attainment of energy savings in PY4 through PY6 will help increase Ameren's ability to achieve its electric savings goals. For example, the AG notes that Ameren's jointly delivered Single Family Home Performance program provides building shell measures that save both gas and electricity, however, this program appears to plan to capture most of the savings from a small number of inexpensive measures and not pursue aggressive home performance upgrades. Specifically, the AG notes that Ameren expects to install 12,004 low flow showerheads, which at an average of 2 per household, would indicate about 6,000 homes will participate. As Ameren's plans are to only insulate 26 walls, and air seal 106 homes, it appears to the AG that Ameren plans to ignore these major measures that provide the bulk of potential savings, apparently based on gas budget limitations. As a result, the AG argues that expanding gas goals and budgets can free up more funds to comprehensively treat these homes, and thereby help Ameren electric meet its much steeper goals within the rate impact caps by capturing greater contributions from gas ratepayers.

3. Natural Gas Spending Limit

a. Ameren's Position

Ameren states that the natural gas provision, Section 8-104, was passed "to reduce direct and indirect costs to consumers." To that end, Ameren notes that it requires utilities to implement cost-effective energy efficiency measures to meet a list of efficiency goals, but like in the electricity provisions, the efficiency requirements must be reduced if necessary to limit rate increases. Ameren asserts that Section 8-104(c) establishes a list of natural gas savings goals for electric utilities, requiring that natural gas utilities implement cost-effective energy efficiency measures to meet stated natural gas savings requirements, while limiting those goals to the extent necessary to keep consumer cost below year-to-year limits. Ameren states that the Act provides that a utility may, if it chooses, exceed year 1's savings goal and roll the surplus over into the next year.

Ameren argues that Section 8-104 does not require, or even permit, integrated utilities like Ameren to charge their gas customers more so that they can spend more on meeting the electric efficiency goals. Ameren notes that it serves both gas-only and electric only-customers, and the cost of implementing an integrated measure must be allocated fairly between electric and gas customers, so that each bears a fair proportion of the costs associated with providing those measures. Ameren opines that forcing gas customers to bear more of the burden so that electric customers can achieve more savings is tantamount to requiring gas customers to subsidize electric efficiency measures.

Ameren avers that rates paid by natural gas customers are earmarked for natural gas services, and it cannot use them for whatever it pleases, and it certainly cannot use them to subsidize its electric customers. Ameren argues the Act is clear that the funds can only be spent on services provided in connection with natural gas service. Ameren notes that Section 8-104(f)(6) requires that utilities show that their plan appropriately allocates costs to gas and electric ratepayers, which Ameren claims draws a clear line between gas ratepayers and electric ratepayers, and requires utilities to divide each group of ratepayers' costs appropriately. Ameren claims that if the legislature had wanted to require integrated utilities to transfer rates across customer categories, it would have said so.

On the separate question of how costs are "appropriately" allocated, Ameren believes that a Source BTU allocation is the best metric as Source BTUs are a finite and constant unit of energy, whereas the projected market prices of electricity and natural gas are prone to volatility and uncertainty. If the Commission disagrees and concludes that an allocation method using net benefits should be used, Ameren asserts that it would be necessary to fix this allocation based on planning assumptions associated with the price of both commodities in order to avoid a disruptive and unnecessary budget reallocation in the middle of program cycles.

Consistent with Ameren's exclusion of transportation customers from the calculation of natural gas savings goals, Ameren notes that it excluded the revenue collected from gas supplied by third parties from its calculation of the natural gas spending limit. Ameren states the Act requires that it limit the amount of efficiency measures in any 3-year period by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service. Ameren argues the delivery service that it provides to transportation customers does not include the sale of unregulated natural gas as a commodity, and the sale of gas is not the sale of a service, but rather the sale of a good, and therefore properly excluded.

Ameren asserts that this type of analysis, in which the service that is delivered by a utility company to transportation customers is found to be delivery, as opposed to sale, has already been adopted by an Illinois court. Ameren states that in Governor's

Office of Consumer Services v. Illinois Commerce Commission, 242 Ill. App. 3d 172 (1992), the court ratified a rate scheme wherein transportation customers paid the utility company a service charge equal to the service charges of the companion sales rate plus additional incremental charges associated with transportation customers.

b. Staff's Position

Staff’s opinion is that Ameren should spend to the 2% limit over the 3-year plan. Staff notes that the degree to which Ameren may spend ratepayer funds on its natural gas energy efficiency programs is limited by 8-104(d) of the Act. Staff avers that Section 8-104(d) provides that, over the course of each three year plan, expenditures should be limited to 2% of the amounts paid by retail customers in connection with natural gas service. What is unclear, according to Staff, is the meaning of the phrase “amounts paid by retail customers in connection with natural gas service.” Staff’s view, apparently shared by Ameren, is that the computation of the natural gas plan spending limit should start with a definition of “amounts paid by retail customers in connection with natural gas service” that excludes amounts paid by large customers to non-certified alternative gas suppliers. Staff notes that the gas plan spending limits computed by Ameren and Staff are the same, as shown in the following table:

Gas Plan Spending Limits (Dollars over Three Years)

Company	Staff
$56,641,420	$56,641,420

c. AG's Position

The AG argues that the spending limitation provided in Section 8-104(d) of the Act should not tie a utility’s hands in its attempts to achieve statutory savings goals. The AG asserts that the Act simply limits the amount of annual collections for efficiency from ratepayers to no more than 2% of rates. The AG notes that program administrators in other jurisdictions are now actively considering an array of financing and other options to increase the funds available for energy efficiency without increasing rates. The AG opines that there is a significant difference between a rate cap and a spending cap, where non-ratepayer funds can be utilized. The AG submits that Ameren should be ordered to submit a plan that leverages outside resources in its attempt to cost-effectively deliver energy efficiency programs to its qualifying ratepayers and achieve the annual statutory goals.

4. Exclusion of Transportation Customers from Calculation of Natural Gas Savings Goals

a. Ameren's Position

Ameren states that it calculated the natural gas savings targets by applying the percentage reductions in the Act to sales volumes consumed by customers served under Rider S - System Gas Service. Ameren notes that therms sold to customers under Rider T, transportation customers, were not included in the therm savings targets. Ameren asserts that customers served under Rider T are those non-residential customers who purchase gas from a supplier other than Ameren. Ameren notes that it excluded transportation customers from its calculation of the natural gas savings goals, as it interprets that Act as requiring that natural gas savings requirements be based upon the total amount of gas delivered to retail customers, and that according to the Act, transportation customers should not be considered retail customers. Ameren avers that it as it does not sell the gas to transportation customers, transportation customers are not retail customers, and Ameren properly excluded transportation customers from its calculation of the natural gas savings targets. Ameren notes that the other gas utilities filing energy efficiency plans pursuant to 8-104 all appear to have used the same basic approach, therefore the Commission should approve Plan 2's natural gas savings goals as reasonable.

b. Staff's Position

Staff notes that Ameren is excluding volumes of gas purchased by its large transportation customers from the computation of savings goals, and Ameren excluded dollars paid to alternative gas suppliers by Ameren's large transportation customers from the computation of the natural gas plan spending limit. In Staff's view, the former was incorrect and the latter is correct.

Staff states that the statute is clear that expenditures should be limited to 2% of the amounts paid by retail customers in connection with natural gas service. Staff asserts there was apparently some question among legislators about how the amounts paid by retail customers in connection with natural gas service should be computed. In support of this assertion, Staff cites a portion of the legislative debate that took place on Senate Bill 1918, which was the bill that ultimately led to the inclusion of 8-104 in the PUA, noting that the transcripts of the House debate include the following exchange:

> Reitz: . . . On the gas efficiency provisions, I'd like to make sure I understand how the charges to customers will be calculated. There are some customers, such as merchant electric generators, who purchase all or part of their gas at wholesale and then transport that gas over the distribution system of the local gas utility. When the utility is calculating the charge to customers, will the utility include the cost of the gas that is purchased by the user at wholesale?

Flider: No.

Reitz: Stated differently, does the legislation intend to cover for purposes of assessing charges, delivery service revenues and retail gas commodity purchases, but exclude wholesale gas purchases?

Flider: Yes.

Reitz: So, what is excluded is the wholesale commodity cost; the utility's cost for transportation for that wholesale commodity is included, right?

Flider: That's correct, yes.

Reitz: And you were talking about excluding only wholesale commodity purchases; retail gas purchases from public utilities and certified alternative gas suppliers are included, right?

Flider: Yes.

Staff avers that this exchange shows that Representative Reitz sought clarification about what costs would be excluded and what costs would be included in connection with the computation of energy efficiency program charges. In the course of the exchange, Staff claims it becomes clear that the bill's sponsor intended that the costs for this computation would exclude wholesale commodity cost, but would include the utility's cost for transportation for that wholesale commodity, along with retail gas purchases from public utilities and retail gas purchases from certified alternative gas suppliers.

Staff claims that a well-established principle of statutory construction is that if the meaning is uncertain, then reference to the legislative history of the measure and the statements by those in charge of it during its consideration should be made. (United States v. Great Northern Ry., 287 U.S. 144 (1932). Staff notes that explanatory legislative history is also consulted for narrowly focused explanation of the meaning of specific statutory language that a court believes is unclear. In Illinois, Staff claims courts have found that "a statute's legislative history and debates are '[v]aluable construction aids in interpreting an ambiguous statute.'" (Krohe v. City of Bloomington, 798 N.E.2d 1211, 1214 (Ill. 2003) (quoting Advincula v. United Blood Servs., 678 N.E.2d 1009, 1018 (Ill. 1996)) In this instance, Staff asserts there could be no better evidence of the statutory language being ambiguous and requiring explanation than the lawmakers themselves finding it necessary to have its meaning clarified through a colloquy on the House floor.

Staff states it is somewhat unfortunate that Representative Reitz, while trying to clarify which costs should be excluded, uses the term "wholesale", as the use of the term "wholesale" could lead one to think that he is not even talking about retail customers. Staff avers however, it is clear from the surrounding sentences that this cannot be the case, and it is clear from the context that the only reasonable interpretation is that "wholesale commodity cost" is being used as shorthand for the cost of gas purchased by a subset of the utility's retail transportation customers, in particular those non-residential customers who are large enough that non-certified alternative gas suppliers may sell to them. Pursuant to Article XIX of the Act and Part 551 of the Commission's rules, Staff notes that to serve "residential customers" and/or to serve "small commercial customers" (non-residential customers that use less than 5,000 therms of natural gas per year), an alternative gas supplier must be certified by the Commission, while serving non-residential customers that use more than 5,000 therms per year does not require certification. Staff opines that the House debate clearly establishes that gas purchases from the utility and from certified alternative gas suppliers are to be included in the computation of charges, leaving out "wholesale" purchases, which, in context, and by a simple process of elimination, can only mean non-certified alternative gas suppliers.

Staff states that according to Ameren, there are no residential or small commercial customers purchasing gas from Certified Alternative Gas Suppliers in the Ameren service territory, however Ameren does sell to larger transportation customers, whom Representative Reitz refers to as "wholesale" customers. Thus, in Ameren's case, Staff asserts that the correct computation is the one made by Ameren, and properly excludes the cost of gas sold by alternative suppliers to larger transportation customers.

While the House debate transcript cited and analyzed above is pertinent to the computation of the spending limit for gas energy efficiency program charges, Staff claims it is not pertinent to the computation of gas savings goals or requirement, noting that nowhere in the exchange is there any mention of therms, dekatherms, MMBTU, or any other units of natural gas consumption. Staff claims the exchange focuses on charges, the cost of the gas, the cost for delivery or transportation, and other expressions of money spent or to be spent rather than gas consumed or gas to be saved.

Staff states that when a court interprets a statute, the primary objective is to ascertain and give effect to the intent of the legislature. Illinois Bell Telephone Co. v. Illinois Commerce Comm'n, 262 Ill. App. 3d 266, 274 (1994) Staff notes that courts have held that the best indication of what the legislature intended is the statutory language itself, (Metro Utility Co. v. Illinois Commerce Comm'n, 262 Ill. App. 3d 266, 274 (1997)); and that clear and unambiguous terms are to be given their plain and ordinary meaning (West Suburban Bank v. Attorneys' Title Insurance Fund, Inc., 326 Ill. App. 3d 502, 507 (2001)). Staff states that where statutory provisions are clear and unambiguous, the plain language as written must be given effect, without reading into it exceptions, limitations, or conditions that the legislature did not express, citing Davis v. Toshiba Machine Co., 186 Ill. 2d 181, 184-85 (1999). In this instance, Staff claims the Act is indeed clear and unambiguous about the computation of natural gas savings requirements, stating that they "shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage." Further, even if the statute was ambiguous, Staff opines that neither the portion of the legislative debate quoted above nor any other part of the recorded debate establishes that any transportation customer volumes should be excluded from the computation of savings goals. Thus, Staff recommends that the Commission adopt Staff's computation of natural gas savings goals; for PY4, 2,351,808; for PY5, 4,703,615; and for PY6, 7,055,423.

c. AG's Position

The AG notes that Ameren bases its calculations of the gas savings requirements using forecast of gas delivery excluding self-directed customers ("SDC") and electric generation uses for each plan year, and thereby has proposed therm savings goals of 1,788,394; 3,576,788 and 5,363,183 for PY4, PY5 and PY6 respectively. The AG asserts that Ameren is calculating its annual gas goals as the appropriate percentage of only the gas commodity it sells, removing the gas load of those transport customers that purchase commodity from a third party. As a result, the AG claims that Ameren has excluded and underestimated the appropriate gas goals by roughly 45%. The AG notes that Staff also concluded that Ameren excluded from the calculation of the natural gas therm savings goals all gas sold by certified and other alternative gas suppliers. The AG avers that Staff sponsored an alternative calculation of the gas savings goals consistent with Section 8-104(m) that included the gas sold to all transportation customers except for those customers who satisfied the requirements of Section 8-104(m), and those revised calculations resulted in gas savings goals of 2,351,808; 4,703,615 and 7,055,423 for PY4 through PY6, respectively.

The AG claims that Ameren's specific exclusion of the gas sold by alternative gas suppliers for purposes of calculating the savings goals presented in its direct testimony is inconsistent with the statute, which specifically states that only those transportation customers who satisfy the specific requirements of subsection (m) shall be excluded from the calculation of the statutory gas savings requirements. The AG recommends that the Commission order Ameren to revise its calculation of the gas savings goals consistent with the recommendations of Staff.

5. Commission Analysis and Conclusion

The Commission notes that Ameren indicates it has calculated its therm savings energy efficiency goals by applying the percentage reductions in the statute to sales volumes consumed by customers served under Rider S, which corresponds to approximately 1.8, 3.6 and 5.3 million therms for PY4, PY5 and PY6, respectively. Ameren is responsible for 80% of the gas savings, or 1.4, 2.8 and 4.2 million therms, and its Plan 2 proposes savings of 3.0 million therm savings for PY4, and 3.1 million therms for PY5 and PY6. The Commission acknowledges that the gas savings goals in Section 8-104 of the Act are cumulative, and that Ameren's projected savings over the three years exceed the required savings over those same three years.

Staff disagrees with Ameren’s calculation of its savings goal, noting that Ameren chose to base its calculation only on retail customers who purchase their gas directly from Ameren, while Staff believes that the calculation should be based on the total amount of gas delivered to retail customers. Staff indicates that based on its calculations, the gas savings goals should be set at 2.35 million therms for PY4, 4.7 million therms for PY5, and 7.06 million therms for PY6.

The Commission notes that CUB indicates in its brief that Ameren proposes to spend $9.49 Million in PY4, $10.26 Million in PY5, and $10.9 Million in PY6. CUB indicates it supports Ameren’s plan to spend less than the maximum allowed under the Act to achieve its required gas savings, and supports granting Ameren the flexibility it has requested on the spending cap, provided Ameren provides the SAG information on any major changes to its programs that result in spending more of its natural gas budget.

The AG is concerned that if Ameren pursues a strategy that just meets the requirements of Section 8-104, Ameren will end PY6 with no greater savings than it started with, and will be required in PY7 to more than double the savings from PY6. The AG recommends that the Commission approve Ameren’s plan for PY4, but require Ameren to significantly ramp up its savings and spending goals so that Ameren captures incremental savings of at least 0.6% of load in PY6. The AG argues this will allow Ameren to not spend all its available funds, while still ensuring a reasonable ramp up to future years.

The Commission believes that the parties are in agreement on Ameren's natural gas spending limit for the three years of the plan, $56,641,420. Staff and Ameren both agree with this amount, although the AG suggests that Ameren should follow the example of utilities in other jurisdictions by seeking non-ratepayer funds to deliver increase natural gas savings. While the Commission certainly encourages Ameren and the SAG to explore diverse funding sources outside of ratepayer funds, it does not appear at present that there is any specific suggestion before this Commission to be considered on this matter.

Where the parties diverge on determining the amount of gas savings to be required of Ameren is in whether the gas purchased by Ameren's large transportation customers, those served under Rider T, should be included in the calculations. Ameren excludes those customers, believing that the statute requires them to only consider gas delivered to retail customers, and that as Ameren does not sell gas to those transportation customers, they should not be included in the calculation.

Staff and the AG both disagree with Ameren's reasoning, and argue that only those transportation customers who satisfy the requirements of Section 8-104(m) should be excluded from the calculation of required gas savings. According to the AG, the exclusion of those eligible transportation customers results in Ameren underestimating the appropriate gas savings goals by about 45%.

The Commission is persuaded by Staff's analysis and arguments that it was proper for Ameren to exclude the dollars paid to alternative gas suppliers by Ameren's large transportation customer from the computation of its gas spending limit, but it was incorrect for Ameren to exclude the volumes of gas purchases by those same transportation customers from the computation of its savings goals. While this result may seem contradictory at first blush, it is clear to the Commission that this finding comports with the statute in question, and the attendant legislative history as discussed by Staff. The Commission will therefore determine that for PY4, PY5, and PY6, the savings goals endorsed by Staff are adopted for this proceeding. The Commission further directs Ameren to include in its compliance filing, a gas savings plan that encompasses the agreed gas spending limit of $56,621,420 and results in the gas savings espoused by Staff and the AG for Plan 2. The Commission recognizes that the requirements for gas savings during the Plan can be accomplished with excess savings in one year satisfying another year, however the Commission expects Ameren to be mindful of the savings requirements that will be expected in the next Plan.

The Commission also directs Ameren to expend excess funds available in any year that are over and above what Ameren expects to spend on gas savings, to the extent possible, toward joint gas-electric savings opportunities that Ameren can identify. While the Commission recognizes that Ameren alone has authority over how it spends these excess funds so long as they are spent in accordance with the requirements of this Order, the Commission expects Ameren to work with the SAG to identify opportunities. Ameren shall not be required to spend more than 75% of the total natural gas budget. The Commission finds that the expenditure of these funds will not only benefit joint gas-electric customers, recognizing that Ameren is a gas and electric utility, but should enable Ameren to approach its required electric efficiency savings under the Act.

III. EVALUATION, MEASUREMENT & VERIFICATION

A. EM&V Contractor Independence

1. Ameren's Position

Ameren says it respects the need to maintain the EM&V evaluator’s independence and believes that EM&V independent evaluators should continue to be contracted with the utility in accordance with the current model as approved by the Commission in Docket No. 07-0539. Ameren asserts that this model retains the Commission’s right to approve or reject the contract; direct Ameren to terminate the evaluator, if the Commission determines the evaluator is unable or unwilling to provide an independent evaluation; and approve any action by the utility that would result in termination of the evaluator during the term of the contract.

Ameren believes that these policies give the Commission substantial oversight over the EM&V process and preserve the independence of EM&V evaluators. In addition, during Plan 1, Ameren claims it took the following twelve steps to protect and demonstrate the EM&V evaluator's independence, and plans to continue similar policies during Plan 2:

1. Staff and a stakeholder group facilitator, as well as various consultants for the stakeholders participated in EM&V bid reviews;
2. Staff and a stakeholder group facilitator participated in EM&V consultant interviews and selection;
3. Staff and consultants for various stakeholders reviewed the EM&V consultant's contract and scope of work;
4. Order language specifying the Commission's role was integrated in the EM&V contract;
5. Stakeholder suggestions were incorporated into the EM&V contractor's scope of work;
6. EM&V reports were distributed simultaneously to Staff, stakeholders, and Ameren;
7. Numerous meetings and opportunities were provided for Staff and the stakeholders to review EM&V work plans and provide input into all work plans;
8. Numerous meetings and opportunities were provided for Staff and stakeholders to comment on EM&V results;
9. EM&V consultants presented or participated in numerous stakeholder advisory meetings where Staff was present;
10. Staff was encouraged to have direct communication with the EM&V consultant, and consultants emailed Staff directly several times to provide updates;
11. Staff participated in weekly and bi-weekly conference calls with EM&V consultants and Ameren staff for activity updates.
12. EM&V methods, activities, and results were accepted by Ameren.

Ameren argues that these practices are comprehensive and seek to involve parties outside of Ameren in all stages of the EM&V process. By putting the EM&V evaluator in constant contact with the stakeholders and Commission Staff, particularly given the mechanisms for direct Commission oversight, Ameren says it is confident that the current model fully protects EM&V independence. According to Ameren, the Commission endorsed this in the last EEDR filing, when it explained that in order to preserve EM&V independence, the "Commission has a supervisory capacity regarding the hiring and firing of this evaluator, meaning that Ameren must gain Commission consent to make the hiring and firing decisions regarding this evaluator." (Ameren Initial Brief at 66, citing Docket No. 07-0539, Order on Rehearing at 3, (March 26, 2008))

2. Staff's Position

According to Staff, both energy efficiency statutes require independent reviews and evaluations. Staff recommends the Commission require Ameren to include contract language consistent with that approved in the Order on Rehearing in Docket No. 07-0539. Staff recommends the Commission include in its Order in this docket the same language included in the Order on Rehearing in Docket No. 07-0539 with respect to Ameren's evaluation contracting approach:

> Ameren, would develop, with input from its stakeholder advisory Committee, a Request for Proposals (an "RFP") to solicit bids for an independent evaluator; Ameren would then file the RFPs as a compliance filing in this docket; Ameren would select, with stakeholder input, an independent evaluator; Ameren would then submit, as a compliance filing in this docket, its contract with the independent evaluator, which would be selected from the firms that responded to the RFP; and This contract must expressly provide that the Commission has the right to: a) approve or reject the contract; b) direct Ameren to terminate the evaluator, if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation; and c) approve any action by the utility that would result in termination of the evaluator during the term of the contract.
>
> (Docket No. 07-0539, Order on Rehearing at 2, March 26, 2008)

Staff recommends that the Commission support Ameren's proposal by ordering Ameren to continue the activities identified by Ameren to help preserve the independence of the EM&V contractor. Staff says both statutes require independent evaluations of the utility's portfolio of measures and the Department's portfolio of measures. According to Staff, independence of the evaluator is extremely important in complying with the statute. In addition, Staff believes Ameren's proposed modified EM&V Framework gives the independent evaluator a significant amount of control during this Plan cycle and Staff has concerns regarding the evaluator remaining independent of Ameren. Staff recommends that the Commission order Ameren to ensure the data used in the independent evaluation is made available to the Commission upon request to further ensure independence of the evaluation contractor. Additionally, to further ensure independence of the evaluation contractor, Staff recommends the Commission require Ameren to instruct its evaluation contractor to submit draft EM&V reports to Ameren, the SAG, and Staff concurrently, Staff believes this should be stated in its contract.

B. Evaluation Cycle

1. Ameren's Position

Ameren indicates it originally proposed one impact and one process evaluation per program per plan cycle. In response to Intervenors' concerns, Ameren has proposed a modified three-year evaluation cycle that explicitly allows the independent evaluator to conduct less than one impact evaluation and less than one process evaluation every year, with a general goal of conducting one impact evaluation and one process evaluation for each program during each Plan cycle.

Further, Ameren says the independent evaluator shall be responsible for developing a 3-year evaluation plan at the beginning of the Plan cycle, for updating this 3-year evaluation plan as necessary to take into account changing market conditions, and for developing evaluation plans for each program. In so doing, Ameren indicates that the independent evaluator should seek advice from Staff, stakeholders and from Ameren, but final plans shall be developed solely at the discretion of the independent evaluator who Ameren claims will also be responsible for managing evaluations to ensure they meet the Commission's approved policies and to ensure that they stay within the Act's spending limitation of 3% of total portfolio costs. Ameren asserts that under its proposal, the independent evaluator will continue to gather on-the-ground measurements for each program within each 3-year plan cycle, including annual measurements to verify participation.

By varying the frequency of impact evaluations, Ameren contends it is allowing the independent evaluator to increase the quality of individual evaluations, for example, by allowing the evaluator to increase sample sizes or make use of mini-studies or other ad hoc approaches as requested by AG witness Mosenthal. Ameren claims the proposal also frees up resources for the independent evaluator to use in conducting additional, more sophisticated process evaluations, which will provide confidence to the Commission and other parties that Ameren is using the best delivery approaches. Ameren believes this should increase confidence in evaluation results and ameliorate Intervenors' concerns.

2. Staff's Position

Staff does not oppose Ameren's proposal subject to the following three conditions:

1. Ameren should have all program impact evaluations completed at least three months before filing its next energy efficiency plan (Plan 3);
2. Process evaluations should be conducted as early as possible for programs that do not appear to be achieving the gross megawatt-hour savings as forecasted; and
3. Since the independent evaluator is supposed to report its findings to the Commission so that the Commission can make a determination as to whether Ameren has met its energy efficiency standards, the final evaluation plans shall be developed at the discretion of the independent evaluator with agreement from Staff.

3. AG's Position

The AG believes a three-year EM&V plan is premature because it is too proscriptive and could result in a poor allocation of limited EM&V funds. According to the AG, limited EM&V funds should be allocated where and when they are most useful. The AG believes this determination should consider things such as, but not limited to:

- How new is the program?
- How much of Ameren's resources are being expended on a given program?
- When did the program start?
- Is the program expected to be continued for a long time or phased out?
- What share of the portfolio impacts come from the program?
- How uncertain are a particular program's impacts, and how big is that uncertainty relative to the overall portfolio savings?
- Is the program a new, complex delivery system, such that an early process evaluation is warranted?
- Are the market and program well understood, and are reasonable values such as NTG ratios known with reasonable certainty from other jurisdictions?
- Is the market very dynamic and changing rapidly enough to warrant two evaluations during a single plan period?

The AG asserts that these factors are consistent with the SAG NTG framework, which the AG recommends be utilized in these EEPs. The AG says that Exhibit A to its Brief was the basis for the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, Joint Exhibit 1.0. The AG believes that framework should likewise be adopted for Ameren.

4. NRDC-ELPC's Position

According to NRDC-ELPC, Ameren witness Weaver suggests that only one process evaluation and one impact evaluation should be conducted for each program during the 3-year plan cycle. While NRDC-ELPC agree that limited evaluation dollars should be used conservatively and prioritized, NRDC-ELPC oppose what they describe as arbitrarily deciding that every program should be evaluated only once over a three year period. NRDC-ELPC suggest for example, a program that Ameren relies upon for a large amount of savings, the impacts of which are not well understood or is subject to changing market conditions may warrant more frequent evaluation. They urge Ameren to engage stakeholders through the SAG to develop a well-reasoned evaluation schedule for each program within the limitations of the evaluation budget. NRDC-ELPC believe this recommendation is consistent with the views expressed by both NRDC witness Grevatt and AG witness Mosenthal.

C. Verified Participation

1. Ameren's Position

Ameren says it proposes to be held accountable through a verified participation process where annual plan savings and cost-effectiveness calculations will be made using participation values that are verified by the independent evaluator and updated each year.

2. Staff's Position

Staff finds Ameren witness Weaver's recommendation to be reasonable and consistent with the process implemented for Plan 1. Staff recommends that the Commission require that annual plan savings and cost-effectiveness calculations be made using participation values that are verified by the independent evaluator and updated each year.

D. Fixed Values

Ameren states that it proposed values for all of the fixed inputs to be used in calculating annual energy savings and cost-effectiveness inputs in Ameren Ex. 1.1 (Rev.) - Appendix A, as well as in its response to Staff Data Request 1.05, which was supplied to all the Parties in this docket. Ameren believes it is imperative that a set of fixed input values be approved by the Commission in this docket. Ameren says this is because any changes to the fixed input values could ripple through to the portfolio savings calculations (and, potentially, to portfolio spending calculations), so if the Commission approves other fixed input values after finalizing portfolio savings goals and spending levels, the consequences might force the case to be reopened to ensure that savings or spending targets are consistent with approved fixed input values.

Ameren complains that most of the Parties offered no position on Ameren's fixed input values. Ameren indicates that Staff says it has not had ample time to thoroughly review all of the values proposed to be deemed by Ameren, therefore, Staff is not testifying to the accuracy of all of the values that Ameren has provided in the filed plan. Ameren says AG witness Mosenthal stated that given the time constraints in this docket, it is not reasonable to expect these values to be deemed without a more thorough review, the opportunity to understand the underlying assumptions, and discussion of their appropriateness. Mr. Mosenthal goes on to suggest the Commission only provisionally deem measure savings values, and direct that Ameren address any appropriate modifications with the SAG. Ameren complains that Mr. Mosenthal offers no firm timeline or process for approving final values outside of an ongoing SAG process.

Ameren says NRDC witness Grevatt testified that there is far too much data involved in deriving proper deemed savings values for it to be fairly considered in the time frame provided for plan approval, especially given the impact that the values will have on Ameren's abilities to meet its obligations. Ameren says he also proposes that the Commission define a process for approving deemed savings values that includes the opportunity for stakeholder input outside of the plan approval process. Ameren again complains that Mr. Grevatt offers no recommendations regarding the timeline or approach that should be used in the approval process.

Ameren says that while it understands the time constraints provided by the legislature for this docket, the parties had five weeks to review and gather discovery regarding Ameren proposed fixed input values, but they chose to offer no evidence contesting the accuracy or appropriateness of the fixed inputs for the Commission to consider. Ameren believes the Commission should not penalize Ameren because of other Parties' decisions as to how they managed their discovery, selected issues for testimony, or prioritized their efforts.

Ameren claims it has provided unrebutted evidence that forms a sound basis for the proposed fixed values, which are a combination of values from the robust DSMore tool and actual EM&V results. Ameren believes the Commission should accept Ameren witness Weaver's recommendation that it accept the fixed input values proposed by Ameren, subject to any changes directed by the Commission in its decision in this case regarding savings goals, spending levels, program designs, and EM&V policies.

1. Standard Measures

a. Ameren's Position

Ameren suggests that the Commission should require that plan savings and cost-effectiveness calculations be made using fixed values for unit savings that apply to all standard measures. Ameren further suggests that there should be no need for a unit savings variance term, deemed or otherwise, in the calculation of unit savings for standard measures, particularly given that most parties agree that fixed values for unit savings should be applied prospectively for standard measures. According to Ameren fixed unit savings values for standard measures should always be applied prospectively and the values should be updated annually to incorporate evaluation results completed before March 1 of the previous Plan year, for application in the beginning of the following new plan year. Ameren states that all measure level savings values that it has proposed the Commission deem in this docket are considered cost effective according to the TRC test.

b. Staff's Position

Staff supports the application of fixed values to unit savings for standard measures in calculating plan savings as it increases certainty, reduces risk on the utility, and reduces litigation complexity. Staff claims this position is intertwined with its position on a Technical Reference Manual ("TRM").

Staff recommends that the Commission reject Ameren's proposal to have load shape and useful life values for standard measures unchanged for all three years of the Plan period. To the extent practical, Staff believes these values should be updated on an on-going basis along with other items in a TRM.

Staff disagrees with Ameren with respect to updating measure-level savings values being an "excessive cost" for the energy efficiency programs. Staff believes the energy efficiency statutes are quite clear when directing the utilities to achieve a quantifiable amount of energy savings each year. For the Commission and Ameren to determine whether the required amount of energy savings has been achieved as directed by the Act, Staff asserts that Ameren must conduct calculations based on the items incentivized through the program. Staff contends that besides the number of items incentivized through the program, arguably the most important input used in the calculation to determine whether the utility has met its statutory energy savings standards as required by the Act is the measure-level energy savings values. Staff believes that updating measure-level energy savings values on an ongoing basis is a “necessary cost” for the energy efficiency programs. In determining whether the requirements of the Act are met, Staff assumes the Commission would prefer the best estimates for measure-level energy savings values be used in these calculations. In addition, if Ameren ever decides to request reimbursement for lost revenue associated with energy efficiency savings, Staff suggests the unit energy savings values that Ameren uses in its calculations should be as accurate as possible.

c. AG's Position

The AG recommends the Commission reject the Ameren approach and instead direct Ameren that:

- Only “prescriptive” or standard measures should be deemed;
- There should be an ongoing SAG process to review and adjust values following the provisional deeming, and SAG members as well as Ameren, its implementers, and evaluators should be able to propose modifications;
- Ongoing modifications should be adopted no later than 3 months from establishment of new values in the SAG, rather than at the beginning of the following plan year; and
- The utilities should establish and maintain a TRM that documents in a transparent way how savings are estimated, and supports on-going effective modification and version control.

Additionally, the AG recommends that the Fixed Values be consistent with the SAG NTG framework. AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570.

The AG recommends that the evaluation cycle be consistent with the SAG NTG framework, AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570. The AG states that for standard measures, this would include provisionally deemed gross measure savings, which would be revisited annually and periodically updated with new information, and then used prospectively beginning with the next plan year start (June 1) following the development of new values.

d. CUB's Position

In the NTG Framework developed by the SAG, CUB says the deeming of ratios would be used only for programs that had already been evaluated in Ameren’s territory and would be applied prospectively using those new evaluation values. CUB adds that for existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes, either in the program design or delivery, or changes in the market itself, NTG ratios established through evaluations would be used retroactively, but could also then be used prospectively if the program does not undergo continued significant changes. In its Plan, CUB claims that Ameren backs away from the commitments made in its prior agreement to the NTG Framework. CUB says Ameren proposes that all NTG ratios used in the planning process be deemed for the entire three years of its Plans, and be applied only retrospectively to its programs.

According to CUB, Ameren in effect is requesting the Commission approve up-front fixed value for certain programs for the entire three year period, regardless of the program evaluation results. CUB believes that this proposal would not be in the public interest. CUB contends that such Commission authorization would remove the important incentives Ameren would otherwise have to carefully manage its contracts with program implementers to secure maximum energy savings for dollars spent on its programs.

CUB disagrees with Ameren’s proposed values, and suggests the Commission limit the deeming of any ratios to only one year or until Ameren and the SAG agree better information is available. CUB believes the Commission policies with respect to deemed parameters such as NTG, realization rates, and gross measure savings should be consistent across utilities.

e. NRDC-ELPC's Position

NRDC-ELPC indicate they agree with Ameren that some deeming of gross measure savings is appropriate, and urge the Commission to adopt some reasonable limitations on doing so. Specifically, NRDC-ELPC believe there is substantial evidence in the record to support a conclusion that it is appropriate to deem the gross measure savings values for a set of standard measures where the unit savings are not large, do not vary significantly between installations and where the number of installations is large enough that the average savings values can be reasonably accurate in aggregate.

However, NRDC-ELPC urge that the Commission require that the actual deemed values for these measures should be determined through a separate proceeding. NRDC-ELPC assert that Ameren has not made available the detailed assumptions behind the deemed measure savings values in its current plan, and the expedited nature of this proceeding does not afford adequate time for assessment of those values. NRDC-ELPC generally agree with the recommendations of both witness Grevatt and witness Mosenthal, who each urge a separate proceeding for the purpose of reaching agreement on deemed gross savings values, which may include an ongoing effort within the Stakeholder Advisory Process, and the development of a TRM which would document all of the assumptions underlying deemed savings values. They add that ELPC witness Crandall also argues for creating a statewide TRM, and describes both the purpose and content of the Manual, including allowing a transparent and well-vetted set of deemed savings values. NRDC-ELPC state that Ameren agrees that a TRM is warranted, although it sees no role for the SAG in developing it. NRDC-ELPC urge that the Commission acknowledge that it is important for the credibility of these programs that stakeholders have been engaged in the development of the assumptions which are relied upon to ensure that savings are real.

NRDC-ELPC provide a table, reproduced below, that provides the specific measures that they believe are appropriate for deeming the gross savings values.

PROGRAMS	Measures Appropriate for Deemed Savings Values
Residential Lighting	All
Residential Energy Efficient Products	All
Residential HVAC	All listed
Residential Appliance Recycling	All
Residential Home Energy Performance	CFLs, Showerheads, faucet aerators, smart strips, water heater insulation water heater setback
Residential ENERGY STAR New Homes	All
Residential Multifamily	CFLs, showerheads and faucet aerators
Residential Behavior Modification	All
Residential Moderate Income	CFLs, showerheads, faucet aerators, smart strips, water heater insulation, water heater setback
Business Standard Incentive	HP T8 and other standard lighting
Business New Construction	HP T8 and T5 measures, CFLs and LEDs

2. Non-Standard Measures

a. Ameren's Position

Ameren recommends that savings and cost-effectiveness calculations should be made using estimates of unit impacts for nonstandard measures that are determined by the independent evaluator. Unit impacts for nonstandard measures shall be updated annually and applied retrospectively.

b. Staff's Position

Staff recommends that the Commission approve Ameren’s request to have unit impacts for nonstandard measures calculated annually and applied retrospectively. Staff says this recommendation is consistent with the process approved for Plan 1. Staff recommends the Commission approve the process of having the load shapes and useful lives of nonstandard measures determined by an independent evaluator.

c. AG's Position

The AG recommends that no deeming be permitted for "non-standard" measures. The AG argues that these are by definition site-specific "custom" measures, and as such should be developed by Ameren or its contractors on a customized basis relying on standard engineering approaches, and subject to verification through evaluations. The AG believes that AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, should be considered as an appropriate model for retroactive treatment of any assumed savings for non-standard measures.

d. NRDC-ELPC's Position

NRDC-ELPC believe that for measures that are fewer in number, that will produce substantial changes and where the variations between installations will lead to very different results, the use of deemed savings values is inappropriate. Specific programs for which NRDC-ELPC believe the measure savings should be measured rather than deemed include those listed below.

PROGRAMS	Measures Inappropriate for Deemed Savings Values
Residential Home Energy Performance	all measures not listed in above table
Residential Multifamily	all measures not listed in above table
Residential Moderate Income	all measures not listed in above table
Business Standard Incentive	all measures not listed in above table
Business Custom Incentive	No deemed savings
Business Retro-commissioning	No deemed savings
Business New Construction	all measures not listed in above table

3. Net-to-Gross

a. Ameren's Position

Ameren states that NTG is a ratio used to convert the gross annual reductions in energy usage to a net value. Ameren says that NTG can be explained as the share of savings that can be attributed to program activities, reducing savings for free riders that reflect underlying market activity that would have occurred even in the absence of the program, and increasing savings for spillover that reflects participants or unit impacts above and beyond those tracked for the program.

Ameren contends that each net value is program-specific and does not include reductions that would have occurred absent the program. Ameren adds that NTG is typically viewed as an adjustment to eliminate free-rider effects. Ameren claims it is important to fix values such as NTG because determining NTG is an inexact science, evaluating values is expensive, determination and application of values is resource intensive, determination of annual values causes them to fluctuate from year to year, encumbering portfolio operations, efficiency, and market stability, determining annual values has timing issues, and the Illinois legislation requires the utility to implement a cost-effective portfolio. Ameren says it proposed a table of NTG planning assumptions to be used in this Plan cycle. Ameren states that for Plan 2 program planning purposes, Ameren based individual program NTG assumptions on Plan 1 EM&V results unless there was sufficient reason to warrant changing them due to circumstances such as new legislation or changing market conditions.

Ameren proposes always prospectively applying NTG inputs. Ameren says that fixed NTG values shall be consistent with those used to develop Plan savings goals approved in this proceeding and remain constant for the entire 3-year plan cycle. Ameren adds that NTG evaluation results completed during Plan 2's cycle shall be used to develop NTG values for the following Plan cycle. According to Ameren, updated NTG values should be applied beginning with the first year of the next Plan cycle. Ameren asserts that prospectively applying NTG evaluation results will allow Ameren, the Commission, and the other parties to focus on quality, cost-effective program delivery, rather than on the sometimes arcane technicalities of impact evaluations. Ameren claims it will also help the regulatory process operate more quickly and more efficiently allowing cases to proceed more quickly and with less expense passed on to Ameren customers.

Ameren believes its approach also assigns a more reasonable risk to Ameren for program performance. Ameren argues that the Commission will set savings goals using the best available information on expected NTG ratios, after receiving recommendations from all the Parties.

Ameren argues that conversely, applying NTG evaluation results retrospectively would hold Ameren accountable for the Parties' collective inability to perfectly forecast NTG values. Ameren contends that in the worst case, applying retroactive NTG ratios could even subject Ameren to perverse consequences. For example, Ameren says Staff recommends increasing the PY6 NTG ratio for the Residential Lighting program from 40% to 48%, which would increase the savings goal for this program by 20%. If evaluations later prove Ameren's original NTG assumption to be correct, Ameren claims it might face penalties for not meeting the approved savings targets. Ameren complains that this is not because it did not deliver the program competently and cost effectively, and not because it did not attract enough participants, but because the Commission made a determination setting Ameren's goals that relied on an inherently uncertain assumption.

For these reasons, Ameren continues to advocate a prospective application of NTG ratios. Ameren asserts that if the independent evaluator finds that NTG assumptions used in setting Ameren's savings goals were not accurate, since this new information will not be used to adjust Ameren's goals, then it should also not be used to measure savings used to calculate performance against those goals.

Ameren finds it notable that the proposal also is consistent with sections of the Act that require Ameren to provide for an annual independent evaluation of the performance of the cost effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations.

With regard to the AG's proposal, Ameren finds the proposal set forth in Mr. Mosenthal's memorandum vague and unworkable in practice. Ameren complains that it also leaves a number of questions unanswered. Ameren questions what constitutes significant changes and how one defines changes in the market itself. Ameren also wonders how would it be determined if the market is undergoing rapid transformation. Ameren insists that its proposed framework carefully considers and resolves these issues with a more definitive structure.

Ameren claims that AG witness Mosenthal admits that his intent was not to propose a great deal of retroactive applications because Ameren has already evaluated many of the programs that provide the greatest amounts of savings, presumably indicating the residential and business prescriptive lighting programs. Ameren states that Mr. Mosenthal also specifically cites these two programs as targeting markets that are currently undergoing rapid change as a result of impending federal standards. Ameren believes that Mr. Mosenthal's proposal would potentially require retroactive application of NTG ratios for two of Ameren's largest programs, even if his intentions were to exclude them. Ameren claims this uncertainty only emphasizes the inherent and unavoidable uncertainty in his proposal.

If the Commission adopts Mr. Mosenthal's approach, Ameren says it fears that the stakeholders themselves will spend a majority of their time debating and contesting whether NTG should be applied retrospectively for a particular program – let alone the debates that would ensue with the utility. Ameren believes the Commission should reject Mr. Mosenthal's approach and approve Ameren's proposal, which Ameren claims is clear and workable; assigns appropriate risk to Ameren by holding it accountable for verified participation, but not for inherently uncertain NTG assumptions; reduces litigation cost and risk; and allows Ameren to focus on quality, cost-effective, program delivery.

Ameren states that its residential lighting program achieved an EM&V measured NTG ratio of 1.0 in program year 1, but Ameren says it originally recommended that the NTG ratio for general service compact fluorescent lights ("CFLs") be reduced to 0.8, 0.6, and 0.4 in PY 4-6. Ameren asserts that this proposal considers the changing market due to the EISA, which phases out the manufacturing of standard 60, 75, and 100 watt incandescent bulbs. Ameren indicates it has limited secondary market research from a major lighting manufacturer which suggests that the new baseline technology is likely going to be CFLs and that the resulting downward NTG for regular CFLs may be significant. Ameren also notes that Massachusetts, Arkansas, California, Connecticut, and Texas have all recognized the market change. Ameren states that

Massachusetts recently reduced NTG for general services CFLs to 0.25, California's Public Utility Commission's draft plan recommends a 10% reduction in bulbs attributed to the portfolio and no CFL incentives after 2012, the Connecticut Commission decided to suspend standard CFL programs in 2010, and Texas-CPS Energy is questioning whether to continue CFL incentives.

Ameren claims that no Party can actually know what effect EISA will have and Ameren believes the proposal of 0.8, 0.6, and 0.4 represents a reasoned, calculated estimation of the appropriate NTG for Plan 2. Ameren contends that while trying to balance market conditions, impact of EISA influence and EM&V recommendations, it is Ameren's intention to maximize savings per the spending limit. Ameren states that if the NTG program planning assumptions turn out to be too low, and Ameren is granted the flexibility to do so, Ameren expects to make adjustments to sales levels to compensate. Ameren further states that all programs will be constantly monitored and managed according to budgets and savings goals. With the lighting program, if adjustments are necessary, Ameren believes it could influence sales of CFLs and budgets to programs by controlling the number of product discounts and retail partnerships, when appropriate.

Ameren believes that this represents the most responsible approach to establishing NTG for regular CFLs. Ameren insists it is more reasonable to adopt a conservative NTG and later adjust the CFL sales if the market effects are more favorable than predicted than to subsequently realize that the actual values are much lower than anticipated. Ameren does not oppose the more conservative NTG values suggested by Staff.

Ameren expects that air conditioner efficiency standards will increase during Plan 2's implementation period. Ameren says the U.S. Department of Energy has a projected timeline for establishing new energy standards, which are scheduled to take effect in 2014. As manufacturers, trade allies, and customers anticipate this date, Ameren's expectation is that the sales of the more efficient units will increase naturally, creating higher free-ridership in the second and third year of Plan 2. Ameren therefore proposes a NTG for Residential HVAC of 0.8, 0.7, and 0.6 for PY4-6, respectively.

Ameren's NTG ratio for its Business Standard program is 0.73, which it says is exactly the EM&V calculated ratio at the time of filing.

Ameren proposes to use fixed values for load shapes, (the allocation of annual savings that occur during subperiods of the year such as seasons, off peak periods, peak periods, and individual hours), and for useful life (the average number of years the measure will remain installed).

Ameren recommends the Commission should require that plan cost-effectiveness calculations be made using fixed load shapes and useful lives that apply to all standard measures. Ameren states that fixed load shape and useful life values for standard measures shall remain unchanged for all 3 years of Plan 2's period, and be updated for the next Plan cycle. Ameren suggests load shapes and useful lives for nonstandard measures shall be determined by the independent evaluator.

b. Staff's Position

Staff agrees with AG witness Mosenthal with respect to the theory that the best incentives for exemplary performance exist with fully retroactive NTG ratios. Although it is ultimately the Commission's determination regarding whether Ameren has met its statutory goal, Staff also recognizes that under fully retroactive NTG ratios (and potentially if used on a prospective basis), an evaluator's decision regarding the final NTG ratio for a program may have a substantial impact as to whether the utility has to transfer authority of its electric EE programs to the IPA, and this pressure on the evaluator may unduly compromise its independence.

In addition, Staff is concerned that if the NTG ratios are not deemed over the entire 3-year period, and if the evaluation cycle framework is approved which allows Ameren to have less than one impact evaluation and less than one process evaluation every year, with a general goal of conducting one impact evaluation and one process evaluation for each program during each Plan cycle, then Ameren will have an incentive to encourage the evaluators to not complete an evaluation on programs which have "preferable" NTG ratios. For example, Staff says all Intervenors involved with the SAG and Ameren would agree that Ameren received a "preferable" NTG ratio for the lighting program during PY1. As such, Staff asserts that Ameren has not put any pressure on the evaluator to have the PY2 evaluation of the lighting program (or any program, including its natural gas program) complete before the filing of this 3-year Plan, which Staff believes severely impacts the most recent information available for the Commission to make its final decision. If the Commission disapproves of Ameren's Plan and requires Ameren to submit a revised Plan in a compliance filing, then Staff recommends that the Commission require Ameren to provide the information relevant (based on data from Ameren's service territory) to determining the NTG ratios in its Plan, including draft reports and survey findings from its natural gas programs and electric programs.

Staff asserts that while retrospective application of NTG ratios is preferable when determining energy savings, the fact that it is impossible to know the true NTG ratio warrants more consideration. Staff believes the NTG ratio risks that the utilities face using NTG ratios on a retrospective basis are unmanageable. In Staff's view, it is crucial that the Commission fix the NTG ratio values over the entire Plan to ensure that Ameren has a fair opportunity to meet its modified statutory energy savings goals, such that the IPA will not be required to take over the electric programs. If the Commission refuses to deem the NTG ratios for all 3-years, Staff recommends the Commission consider allowing Ameren, with support from the SAG, to petition the Commission to modify the electric energy savings goals in future plan years.

According to Staff, NTG ratio estimation is an art, not a science. Staff states that California actually had several different evaluations conducted with each using a different NTG ratio estimation methodology for its residential lighting program. Staff says the range in NTG ratio estimates for the program was quite large. That being said, Staff believes some estimation methodologies may produce more accurate results than others. Staff believes there is no need to expose Ameren to the uncertainty regarding NTG ratios when the true NTG ratios are also uncertain. Staff recommends the Commission fix the NTG ratios over the 3-year period and direct Ameren to have updated NTG ratio values to propose before it files its next 3-year energy efficiency plan.

Although Staff strongly recommends that the Commission fix the NTG ratio values over the entire 3-year Plan cycle to ensure that Ameren has a reasonable opportunity to meet its modified statutory energy savings goals, Staff believes that the NTG ratios proposed by Ameren are not appropriate in all cases. If the Commission approves Ameren's Plan, then Staff recommends the Commission fix the NTG ratio values it recommends. If the Commission disapproves of Ameren's Plan for failure to meet all of the conditions set forth in Sections 8-103(f) and 8-104(f) of the Act, and requires Ameren to submit a Revised Electric and Gas Energy Efficiency and Demand Response Plan in a compliance filing, then Staff recommends that the Commission require Ameren to provide information relevant (based on data from Ameren's service territory) for determining the NTG ratios it proposes the Commission fix for the 3-year Plan cycle, including draft reports and survey findings from its natural gas and electric energy efficiency programs. If the Commission requires Ameren to submit a Revised Plan in a compliance filing, Staff suggests a SAG meeting may be an appropriate venue to discuss the proposed NTG ratio values to have deemed over the 3-year Plan cycle.

Staff states that the table of proposed NTG ratios (Ameren Ex. 2.0 at 20:415), indicates there are many programs that have proposed NTG ratios of 0.8 that are based on "best practice." Staff asserts that Ameren has not provided any convincing evidence in the record to support these values. Staff recommends the Commission order Ameren to ensure that NTG ratio estimates have been estimated for the program elements denoted "Not yet evaluated" in Ameren's list of proposed NTG ratios before it files its next 3-year Plan, where reasonable.

Regardless of whether Ameren works closely with its independent evaluator to attempt to eliminate any surprise in the form of a Net to Gross ratio from the evaluator, because of the upcoming changes in federal standards for many measure types, it is impossible for even the evaluator to know exactly how quickly the market will change. Staff believes that Ameren faces unmanageable risk if NTG ratio values are not fixed over the entire 3-year Plan cycle.

Although Staff recommends that the Commission fix the NTG ratio values over the entire 3-year Plan cycle as it increases certainty, reduces risk on the utility, and reduces litigation complexity; Staff is uncomfortable with some of Ameren's proposed NTG ratio values, as previously alluded to. Staff requests the Commission order the NTG ratio value to be deemed at 58% for PY4, 53% for PY5, and 48% for PY6 for the Residential Lighting Program (regular CFL bulbs). Staff says these numbers came from

ComEd assumptions used to develop its energy efficiency portfolio and these values were based on its PY2 impact evaluations.

Staff thinks it is important to note that the NTG ratio for the specialty CFLs cannot be evaluated based on the current evaluation methodology that conducts random digit dialing to survey potential participants. Staff states that Ameren has requested the NTG ratio for the specialty CFLs be deemed at 80% over the entire 3-year Plan cycle.

Staff says it would have appreciated it if Ameren had made an attempt to have its HVAC Natural Gas Evaluation report complete before it filed its Plan to allow the Commission to make a more informed decision regarding the basis of these numbers Ameren proposes to have deemed for three years. Staff says it does not have knowledge regarding the penetration of 90+% furnaces in Illinois besides that which Ameren stated in its Plan. If the Commission disapproves of Ameren's Plan for failure to meet all of the conditions set forth in the Act and requires Ameren to submit a Revised Electric and Gas Energy Efficiency and Demand Response Plan in a compliance filing, then Staff recommends that the Commission require Ameren to provide information relevant (based on data from Ameren's service territory) for determining the NTG ratio for new furnaces in Ameren's residential HVAC program, including providing draft reports and survey findings from its natural gas and electric energy efficiency programs.

Staff agrees with AG witness Mosenthal's concerns and finds it reasonable to break out the HPT8 measure grouping from the Business Standard program to assign it its own NTG ratio from its most recent evaluation for this measure. Staff says Ameren's finalized PY1 evaluation concluded that the HPT8 program element had a NTG ratio of 58% (15 percentage points less than the proposed NTG ratio of 73%). Staff states that Ameren's preliminary PY2 evaluation findings show that the HPT8 program element had a NTG ratio of 78% (5 percentage points higher than the proposed NTG ratio 78%). Since Ameren's proposed NTG ratio of 73% lies between the final PY1 and draft PY2 evaluated NTG ratio, Staff recommends the Commission deem Ameren's proposed NTG ratio of 73% for the HPT8 program element over the entire 3-year Plan cycle.

If the Commission approves Ameren's Plan, Staff recommends the Commission fix the NTG ratio values provided in the table on page 69 of its Brief over the entire 3-year Plan cycle to ensure that Ameren has a reasonable opportunity to reach its modified statutory energy savings goals. In addition, Staff recommends the Commission direct Ameren to have updated NTG ratio values to propose before it files its next 3-year energy efficiency plan.

c. AG's Position

Ameren's Plan has proposed deeming NTG values for the full 3-year plan period. The AG believes this would create inappropriate incentives for Ameren not to pursue maximum NTG ratios for its programs, or to appropriately shift efforts based on a finding of a low NTG value. In addition, the AG claims it shifts much of the performance risk from Ameren to its ratepayers by not ensuring that Ameren will actually meet the plan goals called for by the Act. The AG recommends that AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, be considered as an appropriate model for retroactive treatment of any assumed savings for non-standard measures.

Specifically, the AG suggests NTG values should be applied prospectively starting in the beginning of the next plan year after new information is available, and the SAG has agreed on an appropriate new value. According to the AG, in some limited cases NTG values may be applied retroactively if the SAG agrees that the program or market addressed is new or undergoing significant changes, NTG values are very uncertain and would have a significant impact on portfolio savings, a reasonable basis for deeming a NTG value is not available, and the costs of evaluation efforts to improve the accuracy of a NTG value. The AG believes these decisions about which NTG values would be used, and the dates they would go into effect, would be established by the SAG and submitted to the Commission, prior to conducting evaluations.

Outside of these recommendations, the AG identified specific concerns with some proposed NTG values. The AG states that Ameren's plan proposes a 0.8 NTG ratio for PY4 for the residential HVAC program, which the AG says seems reasonable for most of the program savings. The AG states that this program has a single measure that accounts for a large portion of savings and is likely to be significantly different than others. Therefore, the AG recommends that a separate ratio be computed for it. The AG is concerned with the NTG estimates for gas furnaces. The AG asserts that in other jurisdictions, condensing gas furnaces have reached very high market penetration, in the range of 70% or more of new furnace purchases. As a result, the AG says some program evaluations have identified very low NTG ratios for this measure. According to the AG, it is not clear if this is true in Illinois, which has had gas programs for a limited time.

In the case of this program, it appears to the AG the vast majority of gas savings will come from this single measure. The AG estimates that this measure will provide Ameren with 1.6 million therms over the plan period. The AG says this represents roughly 67% of Ameren's total expected gas savings from this program over the 3-year plan period and 29% of total portfolio savings for the residential sector. Therefore, the AG believes it deserves its own NTG ratio. The AG states that if this measure has not been evaluated in Illinois and good market data on current baseline penetration is not available, the AG proposes that this would be an instance where deeming is not appropriate. In this instance, the AG believes Ameren should be held to a retroactive adjustment based on the first impact evaluation, with that value also being used prospectively.

The AG questions Ameren's proposed NTG for the residential HVAC program. The AG says the Business Standard program on the electric side is dominated by a single measure category, "HPT8 and T5 lighting." The AG calculates this single measure will contribute 40% of total program electric savings, and 16% of the total C&I

portfolio savings over the 3-year period. Similar to gas furnaces, the AG claims this market is shifting dramatically. The AG claims that most if not all of these measures are replacing older, inefficient T12 lighting systems. The AG notes that starting January 2012, federal standards will ban T12 lamps and ballasts. As a result, the AG claims customers still using this old technology are likely to be already considering replacements before they are stuck not being able to purchase replacement bulbs and ballasts. For that reason, the AG believes the NTG ratio for this measure is already lower than Ameren's proposed average for this program, and will drop significantly over time. In this case, the AG recommends that Ameren could for now deem the NTG ratio from its most recent evaluation for this measure (if it was calculated) for PY4. However, the AG believes that figure should then be updated based on new information as the market evolves.

According to the AG, Ameren correctly points out that the residential lighting market is transforming and it is therefore limiting pursuit of CFLs. However, Ameren also acknowledges that specialty bulbs are exempted from some of the federal requirements, and proposes a much higher NTG ratio for them. However, the AG says the number of specialty bulbs Ameren plans to promote is very small and can be ramped up dramatically.

The AG states in PY3 Ameren expects to sell about 3,000,000 CFLs. The AG says it has dramatically reduced that to about one million for PY4. The AG is concerned that Ameren has very little control over the market response to this program. The AG states that once the participating retailers promote the CFLs with point-of-purchase materials and the Ameren buy down, there is no reason to expect the market will somehow shrink to match Ameren's lower goals. Rather, the AG would expect natural market forces might result in even more CFLs sold under the program than in PY3. While Ameren presumably can stop the program once it reaches its goal by simply canceling it, the AG asserts this approach would be very disruptive to the market. Therefore, if Ameren desires to limit its program to a much smaller number of CFLs, the AG believes a better approach would be to reduce the level of the incentive buy down to try to match market demand with available funds and goals.

d. NRDC-ELPC's Position

NRDC-ELPC agree that some deeming of NTG values is warranted, but urges the Commission to apply appropriate limitations on deeming NTG values to ensure the integrity of the claimed savings. NRDC-ELPC state that deeming NTG values affords the utilities some insulation from undue risk, and avoids wasting evaluation dollars on performing evaluation activities that are not likely to result in significant changes in savings results. However, NRDC-ELPC asserts that these benefits must be balanced against the need for accuracy so that the reported savings can be counted upon by regulators and customers.

NRDC-ELPC urge the Commission to adopt the following limitations on the use of NTG ratios:

1. For programs that have already been evaluated in Ameren's territory, it is appropriate to use the evaluated NTG ratios prospectively;
2. If the evaluation suggests a change in the NTG ratio is warranted, the new factor should be applied at the beginning of the next program year, rather than waiting for the next 3-year planning cycle.
3. For programs that are new or have undergone significant changes, or programs for which the market has changed significantly, the evaluated NTG ratios should be applied retroactively, unless –
    a. The program savings is not large enough to justify the evaluation dollars to assessing the NTG ratios;
    b. The program design and market are understood sufficiently well that an accurate estimate of NTG can be determined in advance.

4. Timing for Updating Fixed Values

a. Ameren's Position

In its initial proposal, Ameren suggested that the timing for updating fixed values would be the three-year evaluation cycle. However, Ameren presented a modified timing proposal in an attempt to ameliorate Intervenors' concerns. The modified proposal is that fixed inputs for unit savings will instead be updated for each new Plan year, with evaluation results completed prior to March 1 of each year to be incorporated in the annual updates. Ameren proposes that fixed values for NTG ratios, load shapes and measure lives will remain unchanged for all 3 years of the Plan period and be updated for the next Plan cycle.

Ameren indicates that AG witness Mosenthal proposes a shorter update cycle, arguing that if Ameren knows of updated fixed values, it should not wait for the new plan cycle to input the changes. Partially in response to these concerns, Ameren adjusted its proposal to include the following:

- As new evaluation results for unit savings are completed, they will be applied prospectively in the following Plan year.
- New unit savings evaluation results completed prior to March 1 will be incorporated into the fixed input values applied to the following Plan year. For example, evaluations completed by March 1, 2012 will be incorporated into fixed input values used to calculate Plan savings for PY5, which begins June 1, 2012.
- Fixed input values for NTG ratios, load shapes and measure lives will remain constant for the entire Plan period. New evaluation results for load shapes and measure lives will be incorporated into the following Plan cycle.

Ameren believes this timing schedule adequately addresses the AG's concerns as it balances speedy implementation of new fixed values as they become available through evaluation with annual operational activities and determination of annual savings. Ameren insists that changing values mid-year creates havoc for portfolio balancing, program implementation, evaluation methodology and determination of annual savings.

b. Staff's Position

Staff recommends that the Commission reject Ameren's proposal to have load shape and useful life values for standard measures unchanged for all three years of the Plan. To the extent practical, Staff believes these values should be updated on an on-going basis along with other items in a TRM. With respect to Ameren's other requests in relation to the timing for updating fixed values, Staff recommends the Commission approve these requests as it increases certainty, reduces risk on the utility, and reduces litigation complexity.

c. AG's Position

The AG believes that ongoing modifications should be adopted no later than 3 months from establishment of new values in the SAG, rather than at the beginning of the following plan year.

5. Realization Rates

a. Ameren's Position

Ameren originally defined a realization rate as a component of its NTG ratio definition, capturing the installation rate of a group of measures, or the portion of measures purchased, which are actually correctly installed. Ameren witness Weaver defines it as the ratio between the savings predicted for a program in planning (or the savings reported for a program during implementation) and the savings estimated for that program in an evaluation. Ameren claims many factors are used in calculating realization rates, basically any variable measured through evaluation that was not perfectly predicted in the planning process (or perfectly measured in implementation reporting), including participation, key parameters associated with installed measures (e.g., measure efficiency; measure size; hours of operation; etc.), NTG ratios, and similar factors. Ameren agrees with adopting Mr. Weaver's definition.

b. Staff's Position

Staff believes that realization rates should be addressed in the independent evaluator's assessment of retrospective evaluation results. Staff states that the source of a low realization rate should be immediately identified and appropriately addressed by Ameren.

c. AG's Position

The AG recommends that the evaluation cycle be consistent with the SAG NTG framework, AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570. Specifically, the AG believes realization rates would not be deemed. For planning purposes, the AG suggests realization rates should be assumed to be 1.0, and the purpose of determining evaluated realization rates is to correctly and retroactively adjust for errors or other problems with Ameren's savings estimates that are within its control. The AG states that any evaluation findings related specifically to adjustments to deemed standard measure savings would be used only prospectively to improve these deemed values, but not be considered a portion of the realization rate that is applied retroactively.

d. NRDC-ELPC's Position

According to NRDC-ELPC, while it is unclear based on the proposed plan whether or not Ameren is proposing to deem realization rates, it is clear that doing so would be highly inappropriate. NRDC-ELPC assert that realization rates are within the control of the implementers, and are partly a function of whether the company has done an adequate job implementing the program plans. NRDC-ELPC aver that deeming these rates relieves the company of its responsibility to do a good job, and creates a situation that is ripe for ratepayer money to be squandered.

It is the recommendation of NRDC-ELPC that all planning estimates of realization rates should be 1.0, and all actual evaluated realization rates should be applied retroactively except for any portion of a realization rate that is based on adjustments to already deemed measure savings values. NRDC-ELPC indicate they are open to the method suggested by Ameren witness Weaver in his rebuttal testimony.

E. Technical Reference Manual

1. Ameren's Position

Ameren supports the creation of a TRM to document the calculations of fixed input values. Ameren says it has already developed a TRM for its business programs and is amenable to developing a similar manual for its residential programs. Ameren recommends that the Commission require that a separate TRM be developed for each utility, as opposed to one statewide TRM. Ameren argues that each utility delivers programs within a unique service territory, with unique weather, market and customer characteristics that need to be captured in the algorithms and assumptions documented in the TRM. In addition, Ameren claims each utility uses different programs, planning approaches, tracking systems, and independent evaluators. In Ameren's view, these differences will determine the appropriate database and variable structure needed to manage the TRM for each utility.

Due to differences in territory conditions, Ameren believes a uniform statewide TRM effort could potentially force appropriate methodologies to be sacrificed at the expense of attempting to arrive at a generic compromise. In addition, Ameren asserts that the creation of a statewide TRM would be a very expensive and resource intensive effort due to data integration, differences in evaluation results and methods, and the use of outside experts (by both utilities and stakeholders) to determine how to best choose collaborative methodologies. That said, Ameren recommends that the utilities and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers. Ameren indicates it would be willing to work with ComEd regarding a consistent format to present its TRM in (to allow for easy comparison among companies) where feasible. Also as suggested by Intervenors, Ameren says it is agreeable to provide its annual TRM for stakeholder review. Ameren believes the Commission should approve its proposal for a utility-specific TRM.

2. Staff's Position

Staff believes that a Statewide TRM should not be the sole responsibility of the SAG. Staff states that although the natural gas efficiency statute acknowledged the benefits of statewide coordination and consistency, Staff believes it may be premature to require the development of a single Statewide TRM when many of the utilities have TRMs still under development. Additionally, Staff acknowledges there are obvious differences in the territories of the Illinois utilities regarding many items, including, but not limited to, labor costs, housing structure, population density, and, even topography and that a Statewide TRM using a single set of assumptions may not be appropriate for Illinois. Staff understands that the development of a TRM is a significant task involving the evaluation team, the utility, and the program implementers. Staff states that based on the reports from Ameren’s evaluation team, Ameren has made tremendous progress in the development of a TRM for the business portion of its portfolio. That being said, Staff says there are still significant areas of its TRM that need improvement. Staff recommends the Commission order Ameren to make best efforts to improve its TRM based in part on recommendations from its evaluation team and the SAG. If disagreements are not able to be resolved between Ameren, its implementation contractor, and its evaluator regarding specific measure level assumptions, Staff believes it would be appropriate for Ameren to bring these issues to the SAG’s attention for further consideration.

Staff recommends the Commission direct Ameren to develop and update an annual Technical Resource Manual for the SAG to review, including collaborating to align the format of assumptions and algorithms for those programs similar to other utilities, where appropriate. Staff recommends the Commission advise Ameren to coordinate through the SAG to compile the Illinois utilities’ TRMs into a statewide TRM, if feasible. Staff suggests that by having Ameren coordinate with the other utilities on a consistent format for its TRM (using best practices), then the compiling of each utility’s TRM into a statewide TRM that can be made publically available online does not seem unreasonable. Staff recommends the Commission direct the SAG to file reports related to its responsibilities via the Commission's e-Docket System in Docket No. 10-0568.

3. AG's Position

The AG recommends that the Commission direct Ameren and the SAG to develop a TRM through the SAG process.

4. CUB's Position

While CUB agrees that the goal of consistent statewide evaluation would be more likely to occur if a TRM was developed, CUB has deep reservations about using funding from Ameren's energy efficiency and demand response programs to pay for a TRM, especially in light of the issues Ameren has meeting statutory electric energy savings targets. CUB contends that taking money away from Ameren's programs to develop a TRM is not feasible at this point. CUB believes a TRM should be kept as low cost as possible and the SAG should be involved in its development. While the Commission should request the SAG explore this issue, CUB believes the AG and ELPC's suggestion to develop a statewide TRM at this point should be rejected.

5. NRDC-ELPC's Position

NRDC-ELPC support the recommendation made by ELPC witness Crandall and AG witness Mosenthal for the development of a TRM. They urge the Commission to require as a condition of approval of deeming for measure savings values that the SAG engage in the process of developing such a reference manual, for approval by the Commission in a separate docket. NRDC-ELPC say Ameren witness Weaver supports the development of a TRM; however, Mr. Weaver disagrees with Mr. Crandall that the SAG should take primary responsibility for developing one statewide TRM. NRDC-ELPC assert that Ameren's recommendation for a separate TRM for each utility fails to address their concerns about lack of continuity regarding input assumptions, savings estimates and NTG factors for the EE & DR programs implemented throughout Illinois.

F. Commission Analysis and Conclusion

The parties' positions, discussions, and recommendations regarding several of the EM&V issues are interrelated making it difficult for the Commission, in some cases, to address them individually. This is not intended to be a criticism of the parties, rather, an explanation of the difficulties the Commission and the parties face on these complicated issues. This conclusion represents the Commission's effort to address the EM&V issues in a complete, comprehensive, and consistent manner.

Generally, the parties and the Commission seem to agree the EM&V contractor independence is important in complying with Sections 8-103(f)(7) and 8-104(f)(8) of the Act. To ensure EM&V contractor independence, the Commission hereby adopts Ameren's and Staff's recommendations to include contract language consistent with that adopted in the Order on Rehearing in Docket No. 07-0539 (March 26, 2008). In addition, the Commission directs Ameren to hire its EM&V contractor consistent with the direction provided in the Order on Rehearing in Docket No. 07-0539 and file the appropriate compliance documents in Docket No. 10-0568. The Commission directs Ameren to continue the activities listed in its Plan to help preserve the independence of the evaluator. The Commission agrees with Staff that Ameren should ensure the data used in the independent evaluations can be made available to the Commission upon request. Further, Ameren is directed to instruct its evaluation contractor to submit draft EM&V reports to Ameren, the SAG, and Staff concurrently, and directs Ameren to include such a provision in its contract.

Ameren currently proposes a modified three-year evaluation cycle that explicitly allows the independent evaluator to conduct less than one impact evaluation and less than one process evaluation every year, with a general goal of conducting one impact evaluation and one process evaluation for each program during each Plan cycle. Staff does not oppose Ameren's proposal subject to several conditions. The AG wants the Commission to adopt the SAS NTG framework that was the basis for the Settlement Stipulation in the ComEd case, Docket No. 10-0570. NRDC-ELPC urge Ameren to engage stakeholders through the SAG to develop an evaluation schedule for each program within the limitations of the evaluation budget.

With regard to the AG's proposal, the Commission believes it would be problematic to impose on Ameren a settlement stipulation from a different proceeding to which Ameren has not agreed. While not specifically what the AG proposes, the Commission finds that Ameren's final proposal regarding the evaluation cycle is consistent with the AG's objectives. Similarly, the Commission believes that Ameren's final proposal adequately addresses the concerns expressed by NRDC-ELPC. The three conditions proposed by Staff, to which Ameren does not object, appear reasonable and they are hereby approved.

With regard to verified participation and the associated calculations, it appears that Ameren and Staff are in agreement and no party objects to their proposal. The Commission concludes that this proposal is reasonable and it is approved.

In order for the Commission to submit the required energy efficiency related reports to the General Assembly, the Commission agrees with Staff and directs Ameren to file the evaluations and reports required by Section 8-103(f)(7) and 8-104(f)(8) of the Act as they become available via the Commission's e-Docket system in Docket No. 10-0568.

Generally, the parties agree that the development of a TRM is appropriate. While some parties believe it is appropriate to develop a statewide TRM, others believe, at a minimum, it is premature to develop a statewide TRM. ELPC witness Crandall, for example, recommends that the SAG should take primary responsibility for developing one statewide TRM. Having reviewed the record on this issue, the Commission concludes that it is neither necessary nor appropriate to order a statewide TRM in this proceeding. The Commission directs that Ameren will work with other utilities subject to the requirements of Section 8-103 and 8-104 of the PUA and the SAG to develop a statewide TRM in the future. This will allow a consistent format to be developed for a TRM. The Commission also accepts Ameren's recommendation that Ameren, as well as ComEd, and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers.

With regard to any suggestion that the SAG should have ultimate responsibility for development of the TRM, Ameren and the SAG should work toward the development of the TRM together. Ameren is also directed to provide its annual TRM for stakeholder review. As for CUB's concerns about using funding from Ameren's energy efficiency and demand response programs to pay for a TRM, the Commission is convinced by the arguments of all other parties that the benefits of a TRM will in all likelihood exceed the costs.

With regard to realization rates, while it was addressed by Ameren, Staff, the AG and NRDC-ELPC, it is not clear to the Commission what if anything is in dispute. The Commission has reviewed the rebuttal testimony of Ameren witness Weaver and finds that his proposal for defining realization rates is reasonable for purposes of this proceeding. To the extent the AG is recommending that the Commission impose on Ameren, a settlement stipulation relating to realization rates from the ComEd proceeding, the Commission rejects such a suggestion as inappropriate.

As an initial matter, the Commission notes that it finds some of the arguments regarding fixed values, deeming, NTG and related issues to be confusing. The Commission again rejects the AG's recommendation that "the Fixed Values be consistent with the SAG NTG framework. AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570." Not only is it somewhat unclear what specifically the AG wants, it is inappropriate to impose the terms of a settlement in another proceeding on Ameren in this proceeding. Ameren, Staff, CUB, and NRDC-ELPC appear to agree to some extent that plan savings and cost-effectiveness calculations be made using fixed values for unit savings that apply to at least some standard measures. Among other things, CUB suggests that the Commission policy with respect to deemed parameters for gross measure savings and other parameters should be consistent across utilities. As outlined above, NRDC-ELPC identified specific standard items for which it believes deeming of gross measure savings is appropriate. NRDC-ELPC recommends that the actual deemed values be determined in a separate proceeding. Finally, the Commission notes that the timing for updated fixed value will be addressed separately below in this conclusion.

The Commission appreciates the relative clarity of NRDC-ELPC's arguments on these issues and appreciates the difficulties that come with an expedited proceeding. The Commission; however, is required to comply with statutory deadlines on a routine basis and does not believe a new separate proceeding to address these issues is an effective use of resources. The request for a separate proceeding is denied.

As noted above, Staff supports the prospective application of fixed values to unit savings updated annually for standard measures in calculating plan savings as it increases certainty, reduces risk on the utility, and reduces litigation complexity. The Commission finds Staff's argument convincing and it is hereby adopted. The Commission adopts the fixed values for standard measures proposed by Ameren as found in Staff Group Cross Exhibit No. 1 Part 1, pp. 96-104, and Staff Group Cross Exhibit No. 1 Part 2, pp. 1-80.

With regard to nonstandard measures, including Custom and Retro-Commissioning programs, Ameren recommends that savings and cost-effectiveness calculations should be made using estimates of unit impacts for nonstandard measures that are determined by the independent evaluator. Ameren proposes that unit impacts for nonstandard measures shall be updated annually and applied retrospectively. Staff supports Ameren's proposal. The AG recommends that AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, be considered as an appropriate model for retroactive treatment of any assumed savings for non-standard measures. Ameren's rebuttal position is consistent with the AG's position that permits the application of deemed values to standard measures, but applies a retroactive evaluation to non-standard measures. It appears that, for the most part, NRDC-ELPC believes deemed savings value for nonstandard measures is inappropriate. With regard to nonstandard measures, the Commission believes that adopting Ameren's proposal in calculating plan savings increases certainty, reduces risk on the utility, and reduces litigation complexity. The Commission finds Ameren's proposal reasonable and it is hereby approved.

Table 17 in Ameren Exhibit 1.1 contains Ameren's NTG factors, as originally proposed. Ameren proposes that NTG factors be fixed for three years and that they always be applied prospectively. Staff recommends the Commission fix the NTG ratio values provided in the table on page 69 of its Brief over the entire 3-year Plan cycle to ensure that Ameren has a reasonable opportunity to reach its modified statutory energy savings goals. In addition, Staff recommends the Commission direct Ameren to have updated NTG ratio values to propose before it files its next 3-year energy efficiency plan. Outside of these recommendations, the AG identified specific concerns with some proposed NTG values. NRDC-ELPC recognize the value of deeming NTG values but proposes specific limitations on the use of NTG ratios.

The gas and electric energy efficiency provisions establish net savings goals, and place performance risk on the utilities through various potential penalties. It is not the Commission’s job to insulate the utilities from such penalties or even loss of the programs. That being said, the determination of how that risk should be balanced, and how net savings are measured, is not fully established. The NTG framework document sponsored by AG witness Mosenthal, and drafted as part of the Stakeholder Advisory Process, is grounded in the assumption that all different evaluation methodologies, contractors, and simple random statistical variation can influence the measurement of NTG, resulting in a higher than desired level of uncertainty for utilities if used solely on a retroactive basis. In addition, the parties recognized in developing the framework that evaluation funds are limited, and it may not be a good use of ratepayer resources to perform evaluations on all programs every year to estimate NTG.

While acknowledging and adjusting for this utility uncertainty, the framework document also acknowledges what is the biggest weakness of Ameren's position that NTG value should be deemed for the three-year period: that deeming NTG ratios can result in perverse incentives that might discourage a utility from making appropriate program changes to ensure against high freeridership, at least in the short term, by guaranteeing savings claims regardless of the program's true effectiveness.
The framework, thus, proposes as follows:

- Where a program design and its delivery methods are relatively stable over time, and an Illinois evaluation of that program has an estimated NTG ratio, that ratio can be used prospectively until a new evaluation estimates a new NTG ratio.

- In cases that fall under the paragraph above, once new evaluation results exists, these would be used going forward, to be applied in subsequent program years following their determination until the next evaluation, and so on.

- For existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes – either in the program design or delivery, or changes in the market itself – NTG ratios established through evaluations would be used retroactively, but could also then be used prospectively if the program does not undergo continued significant changes, similar to the first paragraph above.

- For programs falling under the third paragraph above, deeming a NTG ratio prospectively may be appropriate if: the program design and market are understood well enough to estimate with reasonable accuracy an initial NTG (e.g., based on evaluated programs elsewhere); or it is determined that the savings and benefits of the program are not sufficient to devote the evaluation resources necessary to better estimate a NTG ratio.

- Recommendations of the SAG to the Commission regarding application of this framework shall be submitted with adequate time for Commission review. If the SAG is not in unanimous agreement in its recommendation, the Commission requests that any recommendation that has the support of more than a majority of SAG members be submitted to the Commission along with a discussion and enumeration of the dissenting opinions.

Turning next to the timing for updating fixed values, the AG expressed some concerns with Ameren's proposal for updating unit savings and NTG ratios, and in response, Ameren modified its proposal. Among other things, Ameren's modified proposal, increases the speed at which new fixed values are implemented. It appears that Ameren's modified proposal, as described above, would effectively mitigate the concerns raised by the AG. Staff recommends that load shape and useful life measures be updated on an ongoing basis along with other items in a TRM. The Commission finds no evidence to support Staff's recommendation and it is therefore rejected. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings and NTG ratios, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0.

The AG and NRDC-ELPC express concern about realization rates and insist that realization rates should not be deemed. They also believe that all planning estimates of realization rates should be 1.0. The AG suggests the Commission conclusion should be consistent with the SAG NTG framework, AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570. NRDC-ELPC indicate they are open to the realization rate methods discussed in the rebuttal testimony of Ameren witness Weaver.

Having reviewed the record, it appears that the parties raised legitimate concerns with respect to Ameren's original definition of realization rates and calculations. Ameren witness Weaver suggests that provided the Commission directs the independent evaluator to calculate Plan energy savings as the product of verified participation, unit savings, and NTG ratios, and if the Commission provides guidance with regard to the use of fixed/deemed values as well as prospective/retrospective application, then all issues related to realization rates results can be addressed through the definition of fixed/deemed values or through the independent evaluator's assessment of retrospective evaluation results. (See Ameren Ex. 10.0 at 21-24) It appears to the Commission that Mr. Weaver's assessment of the situation is correct. Additionally, the Commission believes that this order contains sufficient guidance regarding that it should be possible to avoid the issue of deeming realization rates. In sum, it appears that the recommendations regarding realization rates contained in Ameren Ex. 10.0 are reasonable and should therefore be adopted.

IV. PROGRAM ISSUES

A. Portfolio Flexibility

1. Ameren's Position

Ameren indicates that as it did in Plan 1, Ameren asks the Commission to grant it the flexibility to adjust all portfolio elements as needed to achieve portfolio success. Ameren argues that flexibility has proven vital for portfolio success. Ameren asserts that flexibility allows the portfolio to respond to market conditions. According to Ameren, flexibility enables: (1) program implementers to adjust specific designs as dictated by customer and program ally response; and (2) Ameren to rebalance the portfolio based on individual program performance and emerging opportunities, when appropriate. It is Ameren's position that Commission-imposed restrictions to flexibility are more likely to reduce achieved savings than to maintain or increase net savings and prevent ongoing provision of programs across rate classes.

Ameren says it also confirmed that it is willing to continue with the current stakeholder process consisting of monthly informational meetings and quarterly reports. Through these meetings, Ameren says it will continue to work with stakeholders and Staff to ensure all parties adequately understand the changes to Ameren's portfolio. In asking the Commission for approval of its Plan, Ameren requests that the Commission once again grant Ameren the flexibility it was given to administer its previous Plans.

2. Staff's Position

Based on the results from the first EE-DR Plan, Staff does not oppose Ameren's request for approval of these features.

3. AG's Position

While the AG generally supports the notion of Ameren retaining flexibility to adjust its programs as needed to achieve its goals, the AG believes the amount of flexibility granted to Ameren to make adjustments to its programs should be specifically limited if the Commission permits Ameren to deem program impact values. In addition, the AG believes there are some specific exceptions that should be outlined by the Commission in its Order.

The AG says Ameren has proposed that it be afforded virtually unlimited flexibility to shift budgets, modify programs, cancel programs or adopt new programs without Commission approval. The AG says ComEd, in its Plan in Docket No. 10-0570, proposed similar flexibility, but it also established criteria by which it would inform the SAG if it intended to significantly modify the plans, similar to the guidance provided by the Commission in its prior Order. According to the AG, ComEd proposes to fully discuss with the SAG prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program. The AG states that presumably, these modifications would then be discussed among the SAG, and while the utility would ultimately have responsibility for any decisions, SAG members would be free to petition the Commission for reconsideration if they were not able to come to a satisfactory agreement.

As the entity with responsibility for meeting goals and potentially at risk of penalties, the AG supports allowing Ameren flexibility to manage its portfolio and make midcourse corrections as appropriate as it learns more from evaluations, market conditions, and actual experience with program penetrations, subject to the same highlighted conditions as ComEd has proposed, as well as a few others.

According to the AG, there is a tension between flexibility and issues around deeming of impact values. The AG states that if all values are deemed for the full 3-year plan period, then Ameren may have perverse incentives to modify the portfolio in ways that are not conducive to optimizing true net savings, but rather optimizing its savings claims based on deemed values that may no longer be appropriate. The AG, therefore, opposes Ameren's deeming proposal. However, if the Commission were to approve Ameren's proposal to deem most measure impact factors for a full 3-year period, the AG believes that the flexibility granted by the Commission should be much more limited. In the AG's view, any deemed value should be dependent on the specific program design details. The AG asserts that with complete flexibility, Ameren would be free to modify programs in ways that no longer reflect those for which values were initially deemed. The AG supports the flexibility Ameren has requested only if the Commission adopts Mr. Mosenthal's proposal for deeming, similar to what ComEd has proposed. Specifically, the AG believes deemed factors would only be preliminarily approved and can be modified in collaboration with the SAG, and the NTG factors would be adjusted annually based on new information.

In addition to ComEd's list of criteria that would trigger SAG involvement, the AG recommends that the Commission establish some additional constraints on Ameren:

1. Ameren shall not shift more than 10% of spending between residential and C&I sectors without Commission approval; and
2. Ameren shall not modify its plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets.

The AG says these criteria are appropriate for reasons of equity. Given that the opportunities to adjust the cost recovery mechanism would be dependent on Commission approval, the AG asserts that the first criterion ensures that the amount each sector of ratepayers contributes will not diverge more than 10% from the expenditures dedicated to that sector. The AG says the second criterion ensures equity for low income and government customers for which the legislature indicated a clear intent to allocate at least a minimum portion of the overall portfolio expenditures.

The AG has additional concerns about utility flexibility with respect to proposed behavioral programs, and in particular Ameren's proposed residential behavior modification program using HERs.

4. NRDC-ELPC's Position

While there is general agreement that Ameren should be afforded the flexibility it needs to make modifications to the programs to ensure the success of the portfolio, NRDC-ELPC indicate that expert witnesses have suggested several limitations on this discretion. At such time as a revised three-year program plan is approved, NRDC-ELPC urge that the Commission allow Ameren flexibility to make changes in accordance with certain limitations.

Ameren has requested that the Commission grant it the discretion to make extensive changes to its programs between plan filings, which may include such changes as shifting funds from one program to another, eliminating programs, adopting new programs, changing incentive levels or making other fundamental changes in program designs. NRDC-ELPC support flexibility with the following limitations:

1. The Commission should, for equity reasons, limit the amount of program funding that can be shifted from residential to commercial/industrial customers or the reverse. NRDC-ELPC support that such a limitation could be set at 10% of the total portfolio.
2. The Commission should require Ameren to consult with the SAG before making program changes that increase or decrease any program's budget by more than 20%. While Ameren would still make this decision, it would do so having heard the concerns of stakeholders, and the SAG would have had a more meaningful opportunity to fulfill its role as advisor to the company on any matter impacting the success of the portfolio.
3. The Commission should discourage program changes that would result in greater reliance on the Residential Behavior Modification Program. NRDC-ELPC urge that Ameren's flexibility to make program changes should be limited such that no more than the proposed level of savings can come from behavior programs.
4. NRDC-ELPC reiterate that substantial changes of program design during the plan period should result in a reassessment of deemed savings values.

B. Role of the Stakeholder Advisory Group

1. Ameren's Position

In Docket No. 07-0539, Ameren says the Commission ordered creation of what was then called the "Advisory Committee or Stakeholder Group," sometimes referred to as the SAG. Ameren believes the Commission clearly envisioned the stakeholders' role as a group that would offer expertise and advice to utilities as they developed their programming. Ameren asserts that the Commission did not intend to provide these various stakeholders – each of which have their own individual interests, members, or constituents – to have any authority over the utility's administration of the portfolio. Ameren states that in Docket No. 07-0539, the Commission referred to the stakeholders' respective roles as "advisory" group at least twice, did not give any of them decision-making powers, and specifically found that "it is not feasible to grant the collaborative advisory committee veto power." Ameren believes that the stakeholder group is an important source of advice and counsel, but it should not have any direct control over the utilities.

Ameren is supportive of continuing the current model of stakeholder involvement for both the electric and gas energy efficiency portfolio. As currently constituted, Ameren says the stakeholder group meets about once a month. According to Ameren, Staff typically participates in these meetings electronically. Ameren states that most entities specified in the Plan 1 Order participated in stakeholder meetings, including the utilities, DCEO, Staff, the AG, CUB, energy advocate organizations, trades, and local government. In addition to items as specified in the Plan 1 Order such as providing detailed program status reports, Ameren says it collaborated with the stakeholder group in EM&V consultant selection, contracting, work plans, and results. Despite the fact that the Plan 1 Order referred only to electric utilities, Ameren says Intervenors propose Plan 2 include the natural gas portion of the portfolio.

Ameren claims the process for participating in a stakeholder group meeting is not selective; any interested party can join. Ameren's position is that this open forum is valuable, resourceful, and should continue. In Ameren's view, it is important to recognize this open forum also includes parties who have a vested interest in particular programs whereby they or their organizations would benefit and profit from their interests being integrated into the portfolio. For this reason, Ameren believes it is imperative that the stakeholder group remains a non-policy determining entity; otherwise, conflicts of interest would occur, and/or a restrictive membership would need to occur, thus limiting the participation of various stakeholders.

2. Staff's Position

Consistent with the Commission's Order in Docket No. 07-0539, Staff recommends the Commission approve a continuation of the Illinois Energy Efficiency SAG. Staff recommends the Commission direct the SAG to file SAG reports related to its responsibilities via the Commission's E-docket System in Docket No. 10-0568. Staff recommends the Commission direct Ameren to develop and update an annual TRM for stakeholder group review. Staff states that Ameren will collaborate to align assumptions and algorithms for those programs similar to other utilities, where appropriate.

3. AG's Position

The AG indicates that Ameren intends to continue these activities for its future gas and electric plans in order to preserve the EM&V's contractor independence. The AG believes these commitments are appropriate in terms of the specific areas of involvement in the EM&V process. However, the AG suggests that the language of "participated" does not provide any clarity about who has final decision-making authority with regard to these issues. In practice, the AG believes that the SAG process worked well and members generally reached an amicable consensus. However, given the lack of clarity, it appears to the AG that Ameren's proposal would still provide it with ultimate authority to adopt or reject any SAG recommendations. To fully preserve evaluator independence, the AG requests not only that the Commission reaffirm the SAG process be maintained, but also that the SAG, which includes the utilities and the Commission Staff, be the decision-making party on broad EM&V issues. To be clear, the AG says the Commission should allow Ameren to still have authority to perform day-to-day management of the evaluation process and make those ongoing management decisions. However, the AG says permitting the SAG "broad" decision-making authority would consist of (a) development of final evaluation plans and contractor work plans; (b) development of RFPs and scopes of work; and (c) selection of evaluators. With the input of ratepayer and environmental stakeholders and their experts, led by a qualified facilitator, the AG asserts that the SAG offers the Commission the best hope of achieving the kind of independent evaluation of energy efficiency programs envisioned by the General Assembly in Sections 8-103 and 8-104 of the Act. The AG believes this process will help the Commission ensure that the programs offered by Ameren are cost-effective, as required by the Act.

The AG says it is critical to note that as an integrated gas and electric distribution utility Ameren has thus far actively participated in SAG events. Active and constructive participation of the state's other gas distribution companies would add value to the collaborative process underway. The AG notes that Integrys and Nicor have recently filed gas efficiency plans with the Commission. The AG claims that these plans assert that efficiency services will be provided to customers in a seamless and transparent manner, in coordination with ComEd. To maximize the effectiveness of these integrated services, the AG urges the Commission to direct Illinois' other major gas distribution companies -- the Northern Illinois Gas Company ("Nicor"), the Peoples Gas Light & Coke Company and North Shore Gas Company -- to actively and constructively participate in the SAG process.

4. CUB's Position

All of the Staff and Intervenors who addressed the SAG in testimony, CUB states, believe the SAG has been valuable in the development of energy efficiency programs. All intervenors who address the SAG process in testimony declare their support. CUB says only Mr. Mosenthal and ELPC witness Crandall recommend specific adjustments to the SAG. Mr. Crandall recommends the Commission assign the SAG a specific role developing and reviewing "program factors such as net to gross ratios, reasonableness of assumptions used in analyzing energy efficiency and demand response measures and financing option to overcome barriers to greater customer participation in the EE&DR programs." Mr. Mosenthal goes one step further, and suggests that the SAG be given a more structured, decision-making role in Ameren's energy efficiency and demand response programs. CUB disagrees with both these suggestions.

According to CUB, as Ameren witness Martin noted, the SAG itself includes a variety of interests such that extending decision-making authority to this group is not appropriate and has the potential of impeding timely implementation of the programs and related evaluations. CUB asserts that granting the SAG a formal role in the management of utility energy efficiency plans would go against the General Assembly's intention that the utilities take responsibility for meeting the statutory goals. Moreover, CUB is concerned it may well have the effect of undermining the free exchange of ideas at SAG meetings which Ameren finds valuable.

The only change CUB recommends is that the Commission create a similar SAG for the natural gas utilities, and that the two groups be directed to coordinate their meetings. Ameren supports a joint SAG process. CUB envisions an electric SAG meeting for a half day, and a gas SAG meeting the other half. CUB suggests that scheduling both gas and electric SAG meetings on the same day allows for communication and collaboration between electric and gas utilities when necessary.

C. Banking Savings

Ameren says it does not have a position in its Petition on banking energy savings across program years. However, Ameren believes the most appropriate policy regarding the accumulation of savings across program years is demonstrated in the gas energy efficiency legislation Section 8-104(c) of the Act. Also, Ameren believes that applying this method of accumulating savings would provide consistency among utility portfolios. Ameren does not anticipate banking many savings. To the extent that the Commission allows ComEd to bank its savings, Ameren believes it should be allowed to do so as well.

D. Administrative and Marketing Costs

1. Ameren's Position

Ameren states that while it is not entirely clear whether any party has made such a proposal, Ameren does not believe that cost categories should be capped. Ameren says its only cost-related obligations under the statute are to achieve energy savings within a budget; spend less than 3% of portfolio resources on evaluation per year; and spend 3% of energy efficiency and demand-response program revenue on demonstration of breakthrough equipment and devices. Assuming portfolio flexibility and diversity, Ameren says the utility should not be hindered to achieve goals by capping categories of costs that may need ongoing adjustments in order to achieve savings goals. Ameren notes that its portfolio level administrative costs are within the 5% range proposed by CUB witness Thomas.

According to Ameren, administrative and implementation costs for four programs, at the program level, (Energy Efficient Products, Appliance Recycling, Multifamily, and Business New Construction) reflect the challenges of implementing new programs, which will require increased funding in customer education, and market transformations, which require significant administrative costs. Ameren says the need for such investment in these programs may decline while other program needs increase. Ameren has the ultimate accountability for achieving portfolio savings in a cost-efficient manner. Consistent with the rationale for portfolio flexibility, Ameren requests the flexibility to allocate costs as needed to properly and effectively administer and market its programs.

Ameren believes this approach is also consistent with the Act, which requires prudency reviews, but does not require any administrative caps. Ameren contends that this indicates the legislature’s intent was to set a flexible standard of prudency, that would be reviewed on a case-by-case basis. Ameren asserts that requiring it to abide by a spending cap would be contrary to this intent.

2. AG's Position

The AG states that Ameren's proposed administrative and marketing budget costs appear reasonable. On these matters, the AG supports the recommendations of CUB witness Mr. Thomas related to capping such costs.

3. CUB's Position

CUB argues that because all of Ameren's proposed Plan programs are funded by ratepayer money, it is important that as much of that money is spent on program costs which include actual incentives that result in energy savings. For this reason, CUB recommends that the Commission adopt a consistent definition of "administrative costs" so that it can monitor how much any utility is spending internally rather than on direct program administration. Ameren defines "administrative costs" as costs "associated with labor, time, materials and other direct costs necessary to manage the overall portfolio." CUB accepts that definition with one modification: the phrase "internal to the utility" should be included at the end, a proposal CUB says was accepted by Ameren. While the Commission should not strictly cap administrative costs, CUB claims such costs should be held at approximately 5% of the total portfolio, the level estimated by Ameren in this case. CUB contends that doing so will help ensure that as much of ratepayers money as possible is spent on achieving actual energy savings.

CUB says Ameren's marketing budget for its integrated portfolio is $1,101,821, $1,128,404, and $1,149,227, for each Plan year, representing 2.5% of total portfolio costs. As with administrative costs, and for the same reasons, CUB believes monitoring marketing costs is necessary and appropriate to ensure that ratepayer dollars are wisely spent. CUB contends that utilities have an incentive to market the programs more heavily than they need to be due to the goodwill energy efficiency programs engender to the utility brand.

CUB asserts that contrary to Ameren's suggestion, it not requesting an "arbitrary limit" on marketing costs, only that Ameren provide information about what is included in its "marketing costs," and what those costs are for each Plan program. CUB argues that not only is it reasonable for the Commission to require this information, but essential for it to receive this information to evaluate whether Ameren is using its available ratepayer funding in the most cost-effective manner. CUB recommends that the Commission order Ameren to report annually on marketing costs for each of its residential and business programs, and make the report available to SAG members for review. According to CUB, an annual report will give the Commission and SAG an opportunity to review marketing costs and allow SAG to be more effective as an advisory group.

E. Program Recommendations and Concerns

1. Motors Measure

a. Ameren's Position

Ameren states that Plan 2’s Business Standard Incentive program is designed to promote the installation of energy efficient technologies including lighting, motors, HVAC, and refrigeration in nonresidential properties. Ameren says a separate marketing effort will target the motors market in an attempt to transform a historically inefficient marketplace. Ameren states that according to the Cadmus Study, the long-term energy savings associated with the installation of National Electrical Manufacturers Association ("NEMA") Premium motors for Ameren's service territory is approximately 500 gigawatt-hours ("GWh"). Ameren indicates that the motors measure is designed to create pull through marketing for NEMA Premium motors. Ameren asserts it is behavior-based to create long-term persistence. It is technology-based to create short-term opportunities for the retrofitting of existing inefficient motors through innovative marketing programs. Ameren contends it is also designed to create long-term opportunities to replace inefficient motors with NEMA Premium motors through attrition. Ameren believes the motors measure is an appropriate part of its overall Business Standard Incentive program and should be approved.

b. AG's Position

The AG believes Ameren's proposed motors program is inappropriate because federal standards are going into effect on December 19, 2010 that require NEMA Premium motors and eliminate most inefficient motors. The AG says Ameren’s plans put a heavy emphasis on motor savings. The AG claims that 24% of Ameren's Standard program is planned to come from NEMA Premium motors. The AG also says over the three year plan Ameren expects to spend $8.6 Million just on motor incentives in this program. This reflects 23% of the total program 3-year budget and does not include any non-incentive costs for marketing motors, coordinating with trade allies, doing technical assistance studies, or administrative or other costs. According to the AG, actual costs attributable to motors in this program are even higher. In addition, the AG says Ameren appears to also be promoting motors very heavily in its C&I Custom program, with an additional $4.2 Million of incentive expenditures. Finally, it appears to the AG that Ameren is proposing to provide rebates that reflect roughly 100% of incremental costs, which is excessive even if this market made sense to pursue, which it does not.

The AG argues that because of the federal standard, Ameren will effectively be spending a large amount of resources to encourage customers to buy motors at the minimum efficiency level allowed by law. The AG insists this will result in huge numbers of free riders, and actual net kWh savings are likely to be very low. In addition, the AG asserts there are no long-term benefits because customers will have to purchase these NEMA Premium motors anyway. According to the AG, the federal standard only addresses motors from 1 to 200 horsepower. The AG suggests it is possible Ameren's intent is to only promote larger motors not covered by the standards; however, the AG says Ameren presented no evidence of this in its plan.

The AG believes that while it may make sense to encourage customers to replace their existing inefficient motors early, assuming it is cost-effective, the AG still has concerns. The AG says because ultimately these customers will replace their older motors anyway, aggressive retrofit of older motors may simply capture savings a few years early rather than provide significant long term savings, and would likely be very costly. From the program description it appears to the AG that Ameren is mostly focusing on new motor purchases. For example, the AG indicates that Ameren says the program will "attempt to transform a historically inefficient marketplace." The AG repeats that the federal standard has already locked in this market transformation starting in just a few weeks. The AG indicates that Ameren also goes on to talk about barriers to purchases of new motors that generally refer to equipment replacement at time of burn out issues.

According to the AG, it should be noted that Ameren does reference an additional incentive or "bounty" that appears to target the early replacement market. However, it seems to the AG that most of these program resources are simply going to promote purchase of the minimum efficiency allowed by law. The AG urges the Commission to adopt a very limited and targeted upstream strategy for motors targeted only at customers with large motors that plan to rewind (repair) old motors rather than replace them. However, the AG suggests this would require a significantly redesigned delivery strategy working directly with rewind shops to avoid customer gaming.

2. Behavior Modification

a. Ameren's Position

Ameren proposes a Behavior Modification program limited to 50,000 customers pending evaluation of the results of a prior pilot program. Ameren indicates that the program includes HER which provide customers with a profile of their energy use, energy efficiency tips, portfolio program information, and a comparison of their energy usage to their neighbors, encouraging reduced energy use, achieving both gas and electric energy savings. Ameren also says a customer web portal will provide customers with additional energy efficiency information. Ameren asserts that customers will be able to compare their bills over time, see a more comprehensive list of energy savings actions that they can take, and create a personal action plan to help them set and meet energy savings goals. Ameren claims the program is highly cost-effective, with a TRC result of 1.89. Ameren says it also produces both electric and gas savings. Ameren recognizes that the program is relatively new and unproven and believes that limiting participation to the pilot program is a responsible manner of incorporating this promising program into Plan 2.

b. AG's Position

The AG is concerned that Ameren's HER program targets behavior modifications that may not persist and, in the AG's view, is a relatively costly program on a per kWh levelized cost basis compared to other efficiency resources.

The AG argues that because the behavioral savings do not depend on durable changes to equipment hardware, but rather changes in behavior, and because these programs are very new, it is unclear whether these behaviors will persist once the mailings are discontinued. According to the AG, Ameren and its implementation contractor are assuming they would not persist, and that the mailing would need to continue each year to maintain the savings. Given the tight budgets and resource trade-offs necessary to meet goals, the AG believes any funds spent on the HER program will reduce more permanent efficiency savings. While even temporary reductions in energy use have value, the AG contends they are much less valuable than permanent reductions.

The AG says that while the costs of the HER program at first glance seem to be some of the least expensive in Ameren’s portfolio, the AG insists they are not. The AG argues that while on a cost per annual kWh saved they are quite inexpensive, because they only have a one-year lifetime, Ameren would need to pay these costs each and every year to maintain the savings. Compared to other programs which will promote measures that can last for 10 years or longer, the AG asserts the cumulative costs over 10 or 20 years to maintain these savings are actually some of the most costly in Ameren’s portfolio.

In the AG's view, it is understandable that Ameren relies on the HER program for energy savings, given the Act’s establishment of only annual incremental electricity savings goals and rate caps. According to the AG, while the HER program does not offer inexpensive long term value, it does dramatically help Ameren to meet annual electricity efficiency targets at relatively low annual costs. Cognizant of that fact, the AG recommends that the Commission allow Ameren to pursue this program for now in PY4. However, the AG believes greater reliance on this strategy in the future would not be in the best interests of ratepayers. Therefore, the AG suggests that this issue should be considered going forward, in the context of any changes to Ameren’s plans and the legislation, to ensure that limited resources are expended most effectively. The AG believes it may also be appropriate to put a cap on the amount of reliance on HER programs in connection with Ameren’s flexibility to modify its plans to ensure that significant additional funds are not shifted to this program during the plan period.

c. CUB's Position

CUB suggests that the Commission recommend the independent evaluators apply what the California Manual refers to as “Experimental Design,” which provides a transparent framework and minimizes evaluation costs at scale, to Ameren’s Residential behavior modification programs. CUB states that Experimental Design analyzes the electricity usage of program participants compared to a control group to determine actual electricity savings based on meter data that normalizes for all relevant exogenous factors affecting electricity usage. CUB believes that because the evaluation mechanism is custom fit to the individual program, Experimental Design, which CUB claims is recognized as a superior form of EM&V, significantly increasing the accuracy of electricity savings, providing the added advantage of tracking savings on a regular basis for purposes of truing-up incentives by including the following conditions:

- Trackable program participation,
- Standard statistical parameters for measuring electricity savings,
- Robust control group parameters, and
- No double-counting of savings claimed by other programs, such as traditional deemed savings programs.

In order to appropriately apply Experimental Design, CUB contends that participant sample size parameters should be standardized and standard statistical parameters should also be applied to the difference of differences equation used to calculate net program savings. CUB says Ameren has agreed to apply Experimental Design to the isolate and evaluate the impact of behavioral messaging on the test group used in the Residential Behavioral Modification program. CUB maintains that the Commission should recommend the independent evaluator assigned to Ameren work with the SAG to develop Experimental Design guidelines and ensure transparent and consistent methods for determining electricity and natural gas savings. CUB says the evaluator should maintain a master database of participation, billing, and control group data in order to ensure savings are verified in an independent and timely manner. According to CUB, the costs involved with exporting the appropriate data to the independent evaluator must be controlled by Ameren so that the costs do not exceed the 3% EM&V threshold.

3. Home Energy Performance

a. Ameren's Position

Ameren indicates that its Home Energy Performance program ("HEP") focuses on educating residential customers about energy use in their homes and offering information, products, and services to residential customers to effectively save energy costs. Ameren states that this program performs direct installation of energy saving measures (such as CFLs, aerators and showerheads) and allows the customer to identify and implement cost-effective energy efficiency upgrades and practices, as well as providing another entryway for customers to take advantage of Ameren's entire portfolio of residential energy solutions. Ameren adds that a subset of this program is a home retrofit program for moderate income customers who do not otherwise qualify for low income programs. Ameren says it utilizes extensive research, both with individual users and based on existing programs with hundreds of thousands of homes across the country, to determine how well recommendations resonate with customers and how effective each recommendation is at driving action. While a higher cost per kWh program, Ameren believes that HEP is a valuable and important part of its efficiency portfolio and illustrates its commitment to installing persistent energy savings measures.

b. NRDC-ELPC's Position

Ameren offers two “whole-house” retrofit programs, but NRDC-ELPC say its program design assumes that the vast majority of the homes that undertake an audit will not actually install measures beyond CFLs and faucet aerators. According to NRDC-ELPC, Ameren is assuming that its RES Home Energy Performance and RES Moderate Income Retrofit Programs will leave substantial savings on the table that could be captured if the programs were redesigned to result in installation of wall insulation, air sealing and HVAC improvements. NRDC-ELPC estimate that under its current design, Ameren’s whole-home programs will result in less than one percent of audited houses installing wall insulation, and less than 2% installing air sealing measures. This estimate was based on the assumption that the total number of audits would total at or near 6000. Subsequently, through a data request, the actual number of audits was ascertained to be nearly 7800 for the Residential HEP program and 4114 for the Moderate Income Retrofit program. Therefore, NRDC-ELPC say an even smaller percentage of audited homes than was first estimated are projected by Ameren to install the durable measures recommended by the audit. NRDC-ELPC believe that a combination of more aggressive incentives and attractive financing could reasonably be expected to increase these install rates to 30% or better.

In NRDC-ELPC's view, it is critical to understand the implications of a comprehensive whole-home audit program that fails to result in installation of the cost-effective measures. NRDC-ELPC states that fixed costs of the program that are associated with marketing and conducting the audits are spread across the resulting savings. If Ameren incurs these costs and achieves only the most cost-effective savings at each house, then NRDC-ELPC assert that the cost of marketing the same programs and returning to the same houses later to achieve the more durable savings may not pass the cost-effectiveness test. NRDC-ELPC also contends that once a customer has participated in a whole-home retrofit program once, he or she is likely to assume that they have taken all the actions that make sense economically, even if in fact they have not. NRDC-ELPC argue that marketing efficiency programs to these households becomes more difficult and more costly.

According to NRDC-ELPC, Ameren answers criticism of this program by stating that it is working with the Midwest Energy Efficiency Alliance to adapt the program to capture more comprehensive savings over time. NRDC-ELPC complain that Ameren fails to state how the program will adapt over time, or why additional time is needed, or how it will address the lost opportunities created by its failure to optimize the program in this planning cycle. NRDC-ELPC suggest that the failure of these whole-home programs to maximize the cost-effective savings it identifies through audits is simply not justifiable.

NRDC-ELPC urge the Commission to require Ameren to modify both its RES Home Energy Performance and RES Moderate Income Retrofit Programs so that the programs result in substantial savings beyond just the projected CFL and faucet aerators including air sealing, insulation and HVAC improvements. NRDC-ELPC also assert that Ameren could do so by increasing the proportion of the program budget and savings that would be attributed to the gas programs, to be more consistent with ComEd's joint home performance program for which an estimated 85% of the budget will come from the gas utility, compared to only 26% for Ameren. NRDC-ELPC urge the Commission to require Ameren to follow the recommendation that Ameren should increase the natural gas funding for the program while holding the electric funding constant so as to match the ratio of natural gas customer to all electric heat customers in Ameren's service territory.

F. Commission Analysis and Conclusion

Ameren requests that the Commission grant it the flexibility to adjust all portfolio elements as need to achieve portfolio success. Staff supports Ameren's proposal, which it says proved successful in the first plan. While both the AG and NRDC-ELPC generally support the concept that Ameren should be granted flexibility, they recommend restrictions on Ameren's flexibility. As discussed elsewhere in this order, the SAG has proved quite effective thus far and Ameren insists it is committed to continued participation in the SAG. Additionally, it does not appear that any party is suggesting that Ameren has abused the flexibility that the Commission has thus far granted it. Were Ameren to abuse the flexibility granted it, the Commission would, of course, take steps necessary to address such a situation. Given the that Ameren is ultimately responsible for achieving portfolio success, and the other circumstances present, it is not clear that the limitations on Ameren's flexibility proposed by the AG or NRDC-ELPC are necessary, at this point in time. The Commission once again grants Ameren the flexibility to administer its programs in the same manner and subject to the same requirements that it has been granted to administer its previous plans. (See, Final Order, Docket No. 07-0539, Order at 26, (Feb. 6, 2008)) The Commission believes the level of flexibility granted in Plan 1 is sufficient to address Intervenors' concerns and therefore approve the same level of, and application of, flexibility as granted in Docket No. 07-0539.

Ameren, Staff, and CUB recommend that the role of the SAG continue essentially unchanged. In contrast, the AG recommends that the SAG be the decision-making party on broad EM&V issues. Among other things, the Commission is concerned about the suggestion to grant stakeholders decision-making authority, as it raises the possibility of a deadlock, and gives rise to the possibility of conflicts of interest arising in the context of delivering the optimal programs and measures to the ratepayers. Finally, it appears that granting stakeholders decision-making authority would be inconsistent with the rationale articulated in the Final Order in Docket No. 07-0539, and the original intent of the group, which was for it to be advisory only, and which has been effective. The Commission finds that extending decision-making authority to the SAG is not appropriate at this time. The Commission expands the

Illinois Energy Efficiency SAG to cover the gas energy efficiency programs, which is consistent with the approach that Ameren and the SAG have already been taking. In addition, the SAG is directed to file the reports related to its responsibilities articulated in this Order, via the Commission's e-Docket system in Docket No. 10-0568.

With regard to banking savings, Ameren has suggested that to the extent ComEd is allowed to bank savings, Ameren should be granted the same ability. The Commission finds no reason that Ameren and ComEd should be treated differently with regard to banking savings. The Commission grants Ameren the ability to bank savings to the same extent such ability is granted to ComEd in Docket No. 10-0570.

With regard to administrative and marketing costs, it is not entirely clear if there is a dispute between Ameren, the AG, and CUB. The Act requires that energy savings targets must be achieved within the spending limits set forth in Sections 8-103(d) and 8-104(d); resources dedicated to evaluation may not exceed 3% of portfolio resources; and no more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices. To the extent requested by any party, the Commission declines to extend spending limits to categories of costs not set by the Act. CUB's requests that the Commission direct Ameren to provide an annual report on marketing costs for each residential and business program to SAG members. Given that the SAG appears to be functioning in an effective manner as a cooperative process, the Commission is not inclined to insert itself into that process at this time. Nevertheless, the Commission encourages Ameren and CUB to use the SAG process to address this issue, to the extent there is disagreement, and ensure that Ameren complies with the requirements to Sections 8-103(d) and 8-104(d) of the Act.

The AG has expressed concerns with Ameren's proposed business motors program. While acknowledging that it makes sense to encourage customers to replace existing inefficient motors early, the AG urges the Commission to adopt a very limited program targeted only at customers with large motors that plan to rewind rather than replace them. Were the Commission to adopt the AG's recommendation, the AG believes it would require a significant redesigned delivery strategy. While Ameren's brief suggests that it appreciates the AG's concern, it apparently did not appreciate it enough to respond in testimony. The Commission finds that the record supports the AG's proposed modification of Ameren's proposed motors program and Ameren is directed to do so.

Ameren has proposed a behavior modification program limited to 50,000 customers pending the evaluation of the results of a prior pilot program. Both the AG and CUB express concerns with Ameren's proposal, although the AG indicates that it understands why Ameren has proposed such a program. CUB recommends that Ameren expand this program to the same level as ComEd's Home Energy Reports program, and include a RFP process to solicit new ideas from third parties. The Commission review of the record indicates that the proposal has the potential to assist Ameren in meeting the energy efficiency goals. While the behavior modification program is not without its shortcomings, the Commission believes increasing the program to the level of ComEd's Home Energy Reports program is a reasonable proposal. Moreover, CUB's suggestion to include a RFP process to solicit new ideas is a sound one to ensure that the program continues to provide innovative ways for Ameren to meet its future goals and is hereby adopted as well. CUB's suggestion to apply the California Experimental design should be applied by Ameren's independent evaluator to these programs.

As discussed above, Ameren's plan includes a HEP program for residential customers. NRDC-ELPC urge the Commission to require that the HEP program be modified to produce greater energy savings. While the Commission believes NRDC-ELPC's goals are laudable, it is not clear how the Commission or Ameren can achieve them. Unfortunately, NRDC-ELPC's recommendations lack sufficient detail to allow the Commission to adopt them in this proceeding.

V. PROPOSED RIDER EDR AND GER

Ameren proposes continuation of Rider EDR as approved in Docket No. 07-0539 and slight modifications to Rider GER to include 3 separate rate groups

A. Appropriate Rate Groups for Cost Recovery

1. Ameren's Position

Ameren indicates that Rider GER only applies to Residential and Small General (GDS 1 and GDS 2) customers; however, Section 8-104(c) of the Act requires that natural gas customers be eligible for energy efficiency measures and responsible for cost recovery beginning June 1, 2011, except for customers exempted in subsection (m) of Section 8-104. In order to allow for equitable recovery of program expenditures, Ameren proposes three rate groups: Residential (GDS 1), Small Commercial and Industrial (GDS 2 and GDS 3), and Large Commercial and Industrial (GDS 4, GDS 5, and GDS 7). Under Ameren's proposal, a separate cost recovery charge would apply to each rate group.

2. Staff's Position

Staff believes that the three rate groups, as defined by Ameren, are appropriate for the recovery of energy efficiency costs. Staff also concludes that Ameren's proposal to recover its energy efficiency costs from the three rate groups defined in Mr. Schonhoff's testimony is appropriate and recommends that the proposal be approved.

B. Reasonableness and Prudence Language in Riders EDR and GER

1. Ameren's Position

Ameren states that as set forth in Section 8-103(f) of the Act, all costs recoverable through the riders must be reasonably and prudently incurred. Ameren believes there is no dispute that costs recovered through the riders should be prudently and reasonably incurred. However, Ameren insists that the language proposed by Staff is unnecessary. Staff believes the prudency and reasonableness of costs recovered under the riders should be determined in the annual reconciliation proceeding. Ameren argues that the reasonableness of costs and decisional prudence of the costs incurred and recovered through the riders are being determined in this proceeding. In determining whether to approve Ameren's petition, Ameren asserts the Commission is considering many factors, including but not limited to the efficiency of Plan 2, whether it meets savings goals, whether it meets peak demand reduction goals, whether it saves consumers money, and whether the portfolios' designs are acceptable. In essence, this docket is devoted to determining the decisional prudence of Plan 2, and the reasonableness of its resultant costs.

Ameren also claims that the law already provides for independent annual and full three-year period reviews and evaluations of Ameren's and the DCEO's portfolio and program impacts. Ameren contends that during a reconciliation proceeding, it should be sufficient to rely on these independent reports to determine if any managerial imprudence exists during the execution of Plan programs. In Ameren's view, to include the reconciliation language would be redundant and create needless litigation.

Ameren also argues that the proposed language is unworkable in practice, and if accepted, must be modified to reflect the realities of the EM&V process. The rider, as written now, requires that Ameren complete an annual audit report to be filed at the Commission by September 30, subsequent to the completion of a Program Year. Ameren says such testimony would need to allow for proper review of the independent evaluations. Staff recommends requiring testimony to be filed by September 30, which Ameren claims would not provide adequate time to develop such testimony. At the earliest, Ameren says it could file testimony by the later of October 31, or 35 days after it receives the final copies of the independent evaluations.

2. Staff's Position

Staff believes Riders EDR and GER should be modified to include language that requires testimony by Ameren in the annual Energy Efficiency Reconciliation Dockets attesting to the reasonableness and prudency of costs recovered through the Riders. Staff says that while it and Ameren agree that only reasonable and prudently incurred costs should be recovered through the Riders, Ameren asserts that no testimony attesting to the reasonableness and prudency of costs should be required in a reconciliation proceeding.

According to Staff, Ameren has inferred that if the Commission approves the energy efficiency plans, then all costs recovered through the Riders are pre-approved. Staff thinks this is incorrect because there is no pre-approval of costs. Staff argues that costs remain subject to a prudency review in annual Reconciliation Dockets, and that Ameren continues to bear the burden of demonstrating that the costs incurred were in furtherance of the Plan's goals. During the annual reconciliation proceeding, Staff says the costs recovered through the Riders will be examined and deemed reasonable and prudent if, and only if, Ameren is able to demonstrate that the costs were incurred for the implementation or administration of the Plans.

Staff repeats that Riders EDR and GER should include specific language in the tariffs that requires Ameren provide testimony in annual Energy Efficiency Reconciliation Dockets attesting that all costs recovered through the Riders were prudently and reasonably incurred.

C. Incentive Compensation

1. Ameren's Position

Ameren says it currently does not have any incentive compensation in Plan 2. Ameren states that as defined in the riders, incremental employee compensation (including incentive compensation) is not included in the expense used to determine existing base delivery service rates in general rate cases. Ameren argues that excluding incentive compensation from the rider recovery mechanism would provide for less than full recovery of administering energy efficiency programs as it would not be recovered in a general rate case or through Riders EDR and GER.

If the Commission determines the recoverability of incentive compensation costs at this time, Ameren argues this determination can only be made on the facts before it. Ameren says it has proposed a compromise where the level of incentive compensation expenses recovered through Riders EDR and GER be limited to the level of incentive compensation percentage allowed in the most recent general rate case proceeding. In Ameren's view, this approach is an easy way to determine the adequate amount of incentive compensation and addresses Staff's concerns that incentive compensation not become a major issue in reconciliation proceedings. Ameren states that in its final order in Docket No. 09-0537, the Commission approved $3,264,231 of incentive compensation. Based on total incentive compensation expenses of $4,690,185, Ameren says the Commission allowed 69.6% of incentive compensation to be recovered by ratepayers. In order to reduce confusion, complication, or litigation, Ameren suggests the Commission could therefore award Ameren the same percentage of recovery in Riders EDR and GER.

Ameren insists that a blanket prohibition on recovery of incentive compensation is inappropriate. According to Ameren, recent Commission decisions hold that costs related to incentive compensation are recoverable in rates if the utility demonstrates a tangible benefit to ratepayers. Additionally, Ameren asserts that the principle that a utility should recover its prudent and reasonable costs of service is well-established. Ameren argues that it is settled law that employee salaries are operating expenses and, as such, are recoverable in full so long as they are prudent and reasonable. Factors that the Commission considers when determining whether incentive compensation costs are recoverable include whether the incentive compensation plan has reduced expenses, whether it has created greater efficiencies in operations, and whether it can reasonably be expected to provide a net benefit to ratepayers. In other words, Ameren says the Commission's inquiry into the appropriateness of incentive compensation recovery is highly fact-specific and depends on the details of a particular measure.

According to Ameren, Staff extrapolates the language in Docket No. 09-0263 to conclude that the Commission should always, as a matter of course, deny recovery for incentive compensation in riders. Ameren asserts that Staff ignores the Commission's holding that whether incentive compensation recovery should be in a special program should be, and will be, determined on a case-by-case basis. Ameren says the Commission's rejection of ComEd's proposal was based on specific factors in that proposal. Ameren asserts that the ComEd case militates against Staff's request that the Commission broadly rule on a hypothetical measure. Ameren asks that the Commission reserve judgment until a time when it can make its determination on a case-specific basis.

Ameren believes that the denial of recovery in Docket No. 09-0263 was based on several specific factors that will not be present if Ameren ever hires employees under Plan 2 who fit under the definitions of incremental cost in the riders. Ameren contends that there is no reason to believe that if Ameren ever institutes an incentive compensation measure, it will not provide evidence or tie its recovery request to operational metrics. Ameren urges the Commission not to derive a general principle of exclusion from a decision it based on narrow grounds that are not present in this case.

Ameren states that ComEd's Rider AMP was a voluntary program, wherein ComEd chose to incur costs related to the program. Ameren notes that electric and gas energy efficiency programs, on the other hand, are mandated by law. Ameren adds that the law also provides for recovery of energy efficiency and demand response program costs. Ameren asserts that because incentive compensation can be one of these costs, it would be improper to dismiss recovery of such costs outright because it would make matters more complicated.

Citing Sections 8-103(e) and 8-104(e) of the Act, Ameren argues that read together, these provisions indicate that the Act contemplates that any incentive compensation can costs be recovered in riders, and not solely through base rates. Ameren claims that Subsections (e) provides for the use of riders through which a utility is allowed to recover the costs of its energy efficiency and demand response measures. According to Ameren, the Act specifically notes that this tariff "shall be established outside the context of a general rate case."

Ameren notes that Section 8-103(e) provides that the types of costs that may be recovered: "costs estimated for . . . the utility's . . . implementation of energy efficiency and demand response measures." Ameren insists that incentive compensation costs must be defined as "implementation costs" because they relate directly to Ameren employees implementing its energy efficiency and demand response costs. Ameren believes the Act provides that they can be recovered through the proposed riders such as Rider GER and EDR, and not solely through base rates, as Staff suggests.

2. Staff's Position

Staff believes that the recovery of incentive compensation costs should be excluded from Riders EDR and GER. Staff notes that Ameren avers that there are no incentive compensation costs budgeted in the proposed Plan. Staff states that if no incentive compensation costs for Ameren employees are included in the proposed Plans, then the recovery of such costs through the Riders would not be reasonable and prudent.

Staff recognizes that Ameren may hire incremental employees in the future to administer the Plans. The expenses for those incremental employees would be a modification to the Plans as they are currently proposed. Staff says such modifications would void any prior determination by the Commission of the decisional prudence of the Plans. In addition, Staff claims the Commission has previously determined that an annual reconciliation proceeding is not the appropriate place for litigating the issue of incentive compensation. Staff contends that should Ameren seek recovery of future incremental incentive compensation expense for energy efficiency employees, then the three-year energy efficiency plan filing should include an incentive compensation plan which demonstrates ratepayer benefits in the context of energy efficiency. Thus, Staff claims the decisional prudency of Ameren's incentive compensation plan for energy efficiency employees could be litigated once every three years, rather than annually in the reconciliation proceedings. Therefore, Staff believes only the amount of costs incurred would be subject to a prudency review during the annual reconciliations. Staff maintains that the Riders should be modified to include language that excludes the recovery of costs which are not included in the Plans.

3. AG's Position

The AG supports Staff's recommended removal of incentive compensation from any costs to be recovered through riders EDR and GER for the reasons stated in Staff's testimony.

D. Commission Analysis and Conclusions

Beginning June 1, 2011, Ameren has proposed to recover costs from three rate groups: Residential (GDS 1); Small Commercial and Industrial (GDS 2 and GDS 3); and Large Commercial and Industrial (GDS 4, GDS 5, and GDS 7). Ameren proposes a separate cost recovery charge for each of the three rate groups. Staff agrees with Ameren's proposal and no other party objects. The Commission finds Ameren's proposal to reasonable, consistent with the statutory requirements and it is hereby approved.

Staff has proposed that Riders EDR and GER include language indicating that the Ameren must provide testimony regarding the reasonableness and prudence of costs in each annual reconciliation process. Ameren objects to the proposal, claiming among other things that it has operational problems. In essence, Ameren argues that this proceeding will determine whether it makes prudent decisions and whether the costs it incurs to implement the plan are reasonable. The Commission believes that despite Ameren's assertions to the contrary, it could make imprudent decisions or incur unreasonable levels of costs in implementing the Plan approved in this proceeding. The suggestion that this is not true is misguided. As a result, the Commission finds Staff's proposal to be reasonable. The Commission, however, concludes that Ameren is correct with regard to the filing date and finds its proposed modification of Staff's recommendation to be reasonable.

Staff believes that the recovery of incentive compensation costs should be excluded from Riders EDR and GER. Ameren objects to Staff's proposal. The Commission finds the suggestion that it should reach conclusions regarding incentive compensation in this proceeding to be misguided. The Commission need not, and should not, make any findings regarding this issue in this proceeding.

VI. DCEO PLAN

The DCEO states that its portion of the overall portfolio covers the same areas that it did in its first three year electric efficiency plan: the public sector (municipal, K-12 schools, community colleges, universities and State and Federal facilities), the low-income sector, and market transformation programs. DCEO will serve the public and low-income sectors with incentive programs that provide grants or rebates to those consumers that choose to participate in different energy efficiency programs. DCEO states that the market transformation programs are included to support both DCEO’s and the utilities’ incentive programs in the short term and to ensure the long-term viability of the Portfolio as a whole by educating consumers and training building industry professionals in the merits and functionality of energy efficiency.

According to DCEO, these areas were chosen based on the following factors:

- Statutory requirements that apply directly to DCEO;
- Statutory requirements that DCEO has agreed to implement;
- Considerable planning and coordination with the utilities;
- DCEO’s experience with energy efficiency programs and the SAG;
- DCEO’s ability to leverage its current programs and sister Agency partnerships;
- DCEO’s ability to provide energy savings toward meeting the goals of the three year plan;
- The need to position Illinois to meet the longer term requirements by developing a robust energy efficiency services industry; and
- Facilitating program flexibility to allow funds to be shifted to successful programs from underperforming ones.

DCEO indicates it must offer programs to municipalities, schools and community colleges as a result of the statutory requirement. DCEO believes it is reasonable to add programs for universities and State of Illinois and federal facilities due to their similarities to the listed programs and because DCEO already has developed good working relationships with university administrators and other State agencies. DCEO also asserts that because of the cost effectiveness of these public sector programs, DCEO has placed significant emphasis on these programs in order to meaningfully contribute to the kWh savings targets and to meet its statutory 20% gas energy savings goal.

With respect to the low-income sector, DCEO says it became apparent in the planning discussions with the utilities that it would make sense for DCEO to manage the low-income programs. DCEO states that a number of other State agencies (DCEO Weatherization, Illinois Housing Development Authority, etc.) also support low-income consumers and DCEO’s ability to work closely with these other State agencies will facilitate providing services to this sector. DCEO says that it has long managed successful low income programs both under the electric portfolio and independently, and believes it is natural for DCEO to build on these programs for additional contributions to the overall portfolio.

DCEO states that the need to develop a robust efficiency services market led it to include market transformation programs despite the difficulties in measuring and proving the resulting energy savings. Even though these programs do generate direct energy savings, DCEO says most will not be attributed to these programs in order to avoid double counting between them and the utility and DCEO incentive programs. DCEO claims that some of these programs, like the Smart Energy Design and Assistance Program and the Building Operator Certification Program, were shown to have discreet savings attributable to them, and DCEO has included these savings as part of its plan. Broadly, DCEO says the market transformation programs are designed to drive customers to both DCEO’s and the utilities’ incentive programs within the overall portfolio. Because the market transformation programs work with design, engineering, and construction professionals active in both the public and private sector markets, DCEO believes it is most efficient for one entity to administer such programs for all sectors.

DCEO asserts that because it will need the flexibility to make modifications to its programs and plan, it limited the types of programs that would be offered to the three major areas of public sector, low-income and market transformation. In this way, DCEO claims it will be able to shift resources more easily within these categories as needed during this next three-year plan. DCEO believes its Plan meets all of the applicable statutory criteria.

DCEO indicates that the overall Portfolio of energy efficiency programs must be “cost effective” as defined by the Act. DCEO states that the combined portfolio of utility and DCEO programs (excluding the low-income programs described in subsection (f)(4)) has to meet the TRC test.

DCEO says it performed the TRC on its overall portfolio as well as individual programs. DCEO asserts that the portfolio passes the test. DCEO says the low-income programs do not have to be included in this test. DCEO indicates it endeavored to make its programs pass the TRC as an indication of their cost effectiveness; DCEO says this in no way should imply that it believes that individual measures or programs are required to pass the TRC. DCEO says its portion of the portfolio meets this requirement.

According to DCEO, the electric and gas portfolios both effectively assign DCEO 25% of the available EEP funding to support its energy efficiency programs under Sections 8-103(e) and 8-104(e) of the Act. This budget, DCEO says, is constrained by the rate impact caps placed on both the electric and gas portfolios. DCEO's claims its portion of the portfolio meets this requirement.

Section 8-104(e) requires DCEO to coordinate implementation of its electric and gas efficiency measures and to integrate delivery of its efficiency programs. DCEO claims all of its programs will seamlessly offer both electric and gas measures. For some programs, DCEO says that will mean that consumers will apply to the same program for both gas and electric efficiency measures. For others, DCEO states that a single incentive will be offered that covers both electric and gas savings.

As a result of integration, DCEO contends that every aspect of the planning and design of its portfolio has been merged together. DCEO asserts that it is impossible to separate its portfolio analysis into its component parts. DCEO states that individual budgets can, and must, be kept separate to avoid cross subsidization between utilities. However, DCEO insists that calculation of TRC, development of marketing and outreach strategies, formulating the impact of targeted sectors and computation of program metrics cannot be analyzed independently. DCEO claims its portion of the portfolio meets this requirement.

Sections 8-103(e) and 8-104(e) state that a "minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, schools districts and community colleges. The Department [DCEO] shall coordinate the implementation of these measures." DCEO says because it receives 25% of the funding to meet the overall savings targets and because 10% of the overall budget is to be spent on municipalities, schools and community colleges, this obligates 40% of DCEO's total budget for these groups. DCEO claims its portion of the portfolio meets this requirement.

Under the gas statute, DCEO indicates it is required to contribute 20% of the overall gas savings reduction goals. DCEO states that while the electric efficiency portfolio includes no specific electricity savings target for DCEO, DCEO believes it must contribute meaningfully to the overall electric savings goals.

The most cost effective of its programs, DCEO contends, are the incentive programs targeted at the public sector. DCEO claims its summary budget demonstrates that a significant portion of DCEO's budget is allocated to these programs. DCEO says its portion of the portfolio contains a mix of more cost effective programs (like "Public Sector Prescriptive"), less cost effective low income programs, and the market transformation programs that have few, if any, direct energy savings. As a result, when deciding the extent to which certain programs would be supported, DCEO asserts it ensured that it could contribute meaningfully to the overall kWh savings goals and meet its goal of 20% of the overall gas savings requirement within the rate impact caps. DCEO believes its portion of the portfolio meets this requirement.

The statute requires that the utilities cooperate with DCEO to offer a portfolio of energy efficiency programs targeted to households at or below 80% of area median income ("AMI") at a funding level equal to the proportionate share of the amount paid by those households that pay for electric and/or gas service at or below 150% of the federal poverty level. While not DCEO's statutory obligation, DCEO has agreed to implement programs targeted at the low income sector.

DCEO says it calculated this proportionate share using reliable data. DCEO says low income customers' proportionate share averages 6% for electricity and 7.3% for natural gas. The share ranges from 4.4% to 10.4% depending on the utility territory. For Ameren, DCEO says the low income share is 7.1% for electricity and 10.1% for natural gas. In order to comply with the statutory mandate to offer programs to low income households based on their proportionate share, DCEO says these percentages should be applied to the total portfolio budget in each utility territory to determine the budget targeted towards low income customers. The budgets included in DCEO's plan covers these shares for each of the utilities.

The natural gas statute also provides that: "Five percent of the entire portfolio of cost-effective energy efficiency measures may be granted to local government and municipal corporations for market transformation initiatives." DCEO says the natural gas efficiency portfolio statute's reference to providing funding for municipalities to provide market transformation programs further influenced DCEO's planning. In its 2007 electric efficiency plan, DCEO offered a series of market transformation programs designed to provide training and assistance to a variety of public and private groups to support the overall electric portfolio. Given the new language in the gas statute, requests from municipalities for enhanced implementation assistance, and feedback received from the evaluators, DCEO plans to provide further support to public sector entities.

The electric and gas statutes require "specific proposals to implement new building and appliance standards that have been placed into effect." DCEO claims its Training Program will train industry personnel on new energy efficiency codes, for both buildings and appliances, as needed and as funds are available. According to DCEO, the Illinois Capital Development Board regularly updates the Illinois Energy Conservation Code for Commercial Buildings. As a result, DCEO believes there is a need to provide training for commercial building professionals and the local officials who enforce the codes to educate them on the latest energy code updates. Because the statute refers to the support of “appliance standards that have been placed into effect” and because no such standards have yet been placed into effect in Illinois that require training, DCEO did not explicitly include appliance training programs in its plan. DCEO adds that the Federal government sets efficiency standards for appliances as a set of specifications for the Energy Star rating program, for example. According to DCEO, these either do not require training at this time or are covered by other funding sources. DCEO states that if new appliance standards are adopted in Illinois (at the state or local level) that require training, DCEO would include training related activities for those new standards in its Training Program. Moreover, in all cases where DCEO’s efficiency programs include appliances, DCEO supports only the inclusion of high performance (Energy Star, etc.) models.

DCEO indicates it has actively participated with the SAG group at monthly meetings over the last three years, and it believes that the various members’ input has been valuable over the first three years of the implementation of the portfolio. However, DCEO was disappointed that certain parties that did attend the monthly SAG meetings, specifically the Commission Staff and ELPC, did not voice certain concerns that they have now raised in this proceeding. DCEO would urge all parties to participate actively in the SAG process and raise any concerns there rather than waiting for a litigated proceeding to raise them. As a result, DCEO believes this body should continue to meet in order to support the new electric and natural gas efficiency portfolios, and DCEO intends to continue to participate.

A. DCEO Budget and Energy Savings Goals

Ameren states that it and DCEO also agreed upon the savings attributable to DCEO programs. Ameren says that since the costs to deliver meaningful low-income energy efficiency programs can have a significantly higher first year cost, the DCEO energy efficiency portfolio will achieve a lower percentage than 25% of Ameren's electric load reduction goals. Ameren says that the DCEO must still achieve no less than 20% of the gas portfolio savings requirements, and the DCEO goals, targets, and costs are specified in its Plan.

B. EM&V

1. DCEO's Position

DCEO will require detailed reporting from all entities that are awarded grants or rebates pursuant to its efficiency programs. Dedicated DCEO Energy Staff will conduct site visits to ensure that efficiency measures are actually installed. The larger analysis of the success of the DCEO portion of the portfolio will be evaluated through an independent DCEO Evaluator.

In the current three-year plan for the electricity portfolio, the evaluation of DCEO’s programs has been conducted by the team of contractors hired by ComEd to evaluate its programs. DCEO gave its evaluation budget allotment to ComEd, which has in turn managed the evaluation contract. DCEO says ComEd's RFP and subsequent contract included language requiring the evaluators to evaluate DCEO's programs as well. While the evaluators have endeavored to provide a level of effort commensurate with the budgets for DCEO's evaluation, DCEO's evaluation has not received the same level of attention as ComEd's. DCEO believes that this was because it did not have a direct contractual relationship with the evaluators.

DCEO believes it needs its own evaluator that can provide advice to help DCEO set up and manage its programs, procedures, and guidelines in order to maximize the realization rate and the effectiveness of its programs. DCEO will also benefit from an evaluator that understands the unique markets served by DCEO, in particular the public sector and low income households. DCEO would like to start the process as soon as possible, so that an evaluator is selected and on board by June 1, when the new integrated natural gas and electric programs go into effect, so that the evaluator is available to provide on-going advice. DCEO says this is one of the chief reasons why DCEO has been pushing for timely resolution of the efficiency dockets in order to allow sufficient time for DCEO to enter into these and other contracts necessary to support implementation of its plan.

DCEO indicates that the statue requires that no more than 3% of the total EEP budget be used for an "independent evaluation" of the performance of the DCEO and utility portfolio of programs. Once the efficiency portfolio has been approved by the Commission, DCEO will issue its own Request for Proposals to contract with an Evaluator to oversee the evaluation of its programs. DCEO claims this approach will provide DCEO with timelier and better feedback so that it can more effectively assess market needs. DCEO believes this will support better decision making in targeted sales promotions, individual program guidelines and incentive levels offered to participants.

DCEO says the statute requires DCEO's efficiency programs to be evaluated. DCEO will draft an RFP for such services and issue it through the standard State of Illinois procurement process. According to DCEO, this will be done with the advice and input of the Commission and SAG. Once the Evaluator(s) contract is executed, DCEO will continue to work closely with the SAG throughout the course of the contract regarding the evaluation direction, tasks, results, and findings.

2. Ameren's Position

Provided that it does not impact the approval or administration of Ameren's Plan 2, Ameren does not oppose DCEO hiring its own EM&V consultant for its plan as DCEO deemed it necessary to do so. However, to the extent the Commission determines that both Ameren and DCEO should uniformly operate under a single EM&V framework, Ameren proposes that its proposal be accepted and approved for such a purpose.

3. Staff's Position

Staff states that DCEO has proposed to hire an independent evaluation contractor to evaluate its entire portfolio of programs. Considering DCEO will be implementing programs for electric and gas utilities across the state, Staff understands DCEO's concerns. However, DCEO is not directly under the jurisdiction of the Commission, and Staff is concerned about the true independence of a DCEO hired "independent evaluator" and the Commission's ability to regulate the activities of DCEO. If the Commission approves DCEO's request to hire its own evaluator, Staff believes safeguards need to be in place to ensure independence. According to Staff, the Commission needs to be sure it has the authority to enforce any safeguards that it orders. In the event the Commission determines it has jurisdiction to enforce contracts between DCEO and its evaluator(s), Staff recommends the Commission require DCEO to include contract language consistent with that approved for the utilities in the Order on Rehearing in Docket No. 07-0539. Staff recommends the Commission include in its Order in this docket the same language included in the Order on Rehearing in Docket No. 07-0539 with respect to Ameren and DCEO's evaluation contracting approaches.

According to Staff, it is unclear whether the money budgeted for Ameren's evaluations are inclusive of the money to evaluate DCEO programs. Staff states that if it is the case that Ameren's proposal budgets 3% of the total DCEO and Ameren budget for evaluation and the Commission approves DCEO's request to contract its own evaluator, Ameren's evaluation budget needs to be adjusted accordingly so that no more than 3% of the total budget is devoted to EM&V.

4. Commission Analysis and Conclusions

Section 8-103(f) of the Act states that "the utility shall . . . provide for an independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures." The Commission believes this is a utility requirement. Unlike some issues, where the Commission has limited authority over how DCEO implements its portion of the plan, this falls squarely under the Commission's jurisdiction over the utility's filing.

The Commission sees merit in DCEO's plan and believes that DCEO's and Ameren's programs are sufficiently different to warrant separate evaluation. The Commission is cognizant of Staff's concerns regarding the independence of the evaluation and because the Commission has authority over this particular issue, the Commission hereby adopts Staff's recommendation to include language to ensure the independence of the evaluator, similar to that adopted in Docket No. 07-0539.

C. Proposed Programs

1. Ameren's Position

Provided that it does not impact the approval or administration of Ameren's Plan 2, Ameren does not oppose DCEO's proposed programs. Ameren supports DCEO's plan and believes all statutory requirements to coordinate with DCEO have been met. Ameren defers to DCEO's Brief for additional details regarding its plan. Ameren does request that the determination of cost-effectiveness is also applied ex-post at the portfolio level for consistency purposes and any ruling on the DCEO portion of Ameren Plan 2 not impede the Commission's approval of Ameren's portion of its Plan 2

2. Staff's Position

In Staff's opinion, there are several flaws in the plan proposed by DCEO. Staff asserts that so-called lost opportunities investments may provide sub-optimal energy savings. Staff also believes the Commission should reject the DCEO's proposals to provide incentives to any federal facilities, or to a program called "Building Energy Code Compliance." Staff states that Sections 8-103(b) and 8-104(c) of the Act provides that electric utilities shall implement measures to achieve "incremental energy savings goals." Staff contends that these programs do not provide any incremental electric or gas savings to ratepayers.

Staff summarizes the lost opportunities argument as many individual measures have long time intervals before replacement occurs and many "whole building" projects also occur only infrequently. Staff suggests, for example, a building owner may install an appliance that is not the most energy efficient model, or might exclude an energy efficient appliance when renovating a building. Staff asserts that when this occurs, the owner forgoes the opportunity to save more energy until the next time that appliance needs to be replaced or the building is renovated, which could be several years in the future. Staff states that these occurrences are considered a lost opportunity to achieve greater energy savings for several years.

Staff states that every project or measure foregoes some energy savings possible when a less efficient measure is used. According to Staff, the "lost opportunity" concept ignores the difference in price between a less-than-the-most efficient and the most efficient measure and the impact those price differences have on the total energy savings that a program can achieve. By ignoring price differences, Staff asserts that the concept fails to account for the tradeoff between more efficient but fewer measures and less efficient (but still efficient relative to the appliance standard) but more measures. Staff contends that it cannot be assumed that aggregate energy savings are higher using the most efficient measures at every individual opportunity. If the increase in energy savings is greater by performing more projects or installing more measures with less efficient and less expensive measures than it is by performing fewer projects with more efficient and more expensive measures, Staff believes it is preferable to install the less efficient measures at a lower cost. Staff provides an example to demonstrate its position.

In order to determine when to install less efficient measures, Staff recommends that the Commission order DCEO, for each measure or whole building project, to follow the procedure below:

1. Determine the number of measures or projects that can be performed within the budget when the most efficient measures are installed and when less than the most efficient measures are installed.
2. Determine the energy savings for the most efficient measure or whole building projects and the energy savings for lesser efficient measures or whole building projects.
3. If the absolute value of the percentage increase in the number of projects is greater than the absolute value of the percentage decrease in energy savings, use the less than most efficient measures. Otherwise, install the most efficient measures.

In Staff's opinion, it is not appropriate to provide funds to federal facilities in this upcoming energy efficiency plan. Staff contends that there are no incremental savings through these efforts because Executive Order 13514, which was signed by President Obama on October 5, 2009, requires federal agencies subject to this order to "(g) implement high performance sustainable Federal building design, construction, operation and management, maintenance, and deconstruction including by . . . (ii) ensuring that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings, (Guiding Principles)." Staff states that amongst the objectives in the Guiding Principles is that "[f]or major renovations, reduce the energy cost budget by 20 percent below pre-renovations 2003 baseline."

Staff believes that Executive Order 13514 and the Guiding Principles require federal facilities to conduct substantial energy efficiency upgrades if they are cost-effective whenever renovations take place. Since these upgrades, if cost-effective, must take place during any renovations, Staff believes they do not provide any incremental electric savings, which are the standards of Sections 8-103(b) and 8-104(d), respectively. Since ratepayer-provided funds for these projects do not contribute any incremental savings, Staff recommends that the Commission rejects this element of the DCEO plan.

Staff believes that the Building Energy Code Enforcement Program that DCEO proposes does not provide any incremental savings. Staff believes this program adds no incremental energy savings. Staff says program money would only be used for the DCEO to achieve energy savings that it is already required to achieve through other mandates. Staff states that if the gas and electric utility energy efficiency programs did not exist, the DCEO must generate these savings to comply with state and federal laws.

In Staff's view, these are not incremental savings as required by 8-103(b) or 8-104(c) of the Act and should not be paid for through ratepayer funding.

Staff understands that Sections 8-103(f)(2) and 8-104(f)(2) of the Act requires a utility to present "specific proposals to implement new building and appliance standards that have been placed into effect." Staff asserts that cost-effectiveness under the TRC test measures benefits of measures with savings in excess of the appliance standards relative to the costs of measures that exceed appliance standards. Staff also contends that NTG ratios are used to determine how much energy savings from any program are attributable to the program and how much would have occurred in the absence of the program. Therefore, Staff believes that these factors indicate that the "incremental savings" required by Sections 8-103(b) and 8-104(c) supersede the requirements of subsections 8-103(f)(2) and 8-104(f)(2)of the Act. Staff states that were DCEO to modify the Building Energy Code Enforcement Program such that its goal was to exceed the standards required in the Acts mentioned by Mr. Baker, and it could be done in a cost-effective manner, Staff would not object to such modifications.

3. AG's Position

The AG suggests that DCEO should expand or leverage the success of its existing programs such as "Lights for Learning" targeted to K-12 schools as an educational fundraising program that promotes the sale of low cost, energy efficient CFLs. The AG says the Lights for Learning program does not provide any tangible EE or environmental benefits or savings to the participating schools. According to the AG, DCEO now has the opportunity to turn its goodwill and relationships derived from the Lights for Learning program into tangible EE savings that could be obtained from other programs directed at K-12 schools.

The AG believes the Commission should expressly modify DCEO's plans to expand its direct marketing efforts in schools and other public facilities.

4. NRDC-ELPC's Position

According to NRDC-ELPC, DCEO made several critical errors in its development of avoided costs that skew the costs, savings, and benefit-cost ratios for DCEO's programs. Given these errors, NRDC-ELPC believes the Commission cannot reasonably determine whether DCEO's plan meets the statutory criteria in Section 8-103 of the Act.

NRDC-ELPC state that avoided costs are the marginal costs for a public utility to produce one more unit of power. NRDC-ELPC says program evaluators must rely on accurate estimates of avoided costs in order to model the benefits and cost-effectiveness of energy efficiency measures. NRDC-ELPC add that avoided costs are necessary to evaluate the Net Present Value of the total benefits of the measures, and are therefore important to evaluate the TRC. TRC is the primary benefit-cost screening measure that the legislature directed the Commission to apply when reviewing the energy efficiency programs under the Act. Thus, NRDC-ELPC say if avoided costs are not calculated accurately the Commission will not be able to determine if a utilities' portfolio of programs meets the requirements in the statute.

In this case, NRDC-ELPC allege DCEO made several errors when calculating the avoided costs used by the DCEO to analyze and evaluate the various programs and measures in its portion of the plan. NRDC-ELPC assert that the utilities' avoided costs as used by DCEO differed significantly, by a factor of nearly five in some time periods. NRDC-ELPC insist this is not a logical result for two adjacent utilities operating in a well-interconnected system. NRDC-ELPC would expect the avoided costs to be more similar. NRDC-ELPC also complain that the escalation rates DCEO applied to the ComEd and Ameren avoided costs differed by a factor of 2.3. NRDC-ELPC also believe this would not be logical for two adjacent utilities serving related markets.

NRDC-ELPC contend that the flaws in DCEO's avoided costs could result in measures and programs failing to pass, or passing with a lower benefit cost ratio, if the flawed avoided cost was lower than appropriate. In addition, they claim flawed inputs could corrupt the results from DCEO's screening model by understating or overstating the benefits of the screened measure or program.

NRDC-ELPC state that DCEO has the burden to demonstrate that its filed plan meets the requirements of the statute. They say that because DCEO did not file rebuttal testimony countering or explaining the discrepancies with its presentation of avoided costs, ELPC witness Crandall's testimony stands unrebutted.

DCEO has not met its burden under Section 8-103(f)(5) of the Act, according to NRDC-ELPC. The DCEO, NRDC-ELPC asserts, cannot accurately calculate the TRC test without an accurate estimate of avoided costs. NRDC-ELPC maintain that the DCEO's estimate of avoided costs is flawed. NRDC-ELPC recommend that the Commission should reject DCEO's portion of the Ameren plan and require the DCEO to refile the plan using the correct avoided costs.

DCEO proposes to offer its programs statewide as opposed to offering different programs and incentives in the different utility service territories. NRDC-ELPC have concerns about this approach in light of the significant difference in avoided costs that DCEO currently projects. According to NRDC-ELPC, DCEO's use of a statewide weighted average avoided cost that is based on significantly different utility inputs could create inequity between commercial customers and public sector customers within Ameren's service territory. NRDC-ELPC say this is because a school in Ameren's service territory, for example, could receive a much different incentive to save energy than a commercial customer just by virtue of the DCEO having created a standard program offering based on fictitious composite avoided cost.

NRDC-ELPC recommend the Commission direct the DCEO to reassess its statewide program offerings and incentives in light of the revised avoided cost inputs that it must develop in order to correct the problems they claim to have identified.

5. DCEO's Position

DCEO indicates that Commission Staff and the ELPC raised issues in this proceeding specific to DCEO's implementation of its efficiency plan. DCEO states that although the Commission has no regulatory authority over DCEO to determine the implementation of programs, and cannot order DCEO to carry out its programs in a particular way. DCEO responds to their concerns for the sake of a complete record.

Staff raises three issues with DCEO's plan, relating to DCEO's low income programs, its Building Code Compliance program, and serving Federal facilities. DCEO disagrees with Staff's analysis.

Staff states that "Although it may appear to be a good use of funds, there are cases where an alternative measure that saves more energy than the baseline measure but less energy than the most efficient measure is actually preferable from both a net benefit and an energy savings perspective." DCEO describes Staff's mathematical analysis as "unique," but DCEO claims Staff's recommended procedure for determining what measures are included in its low income energy efficiency programs would not result in the most prudent use of public funds. DCEO asserts that Staff's analysis discounts the social tendencies of low income residents. DCEO believes ensuring that the most efficient measures are installed all at once is critical given specific aspects related to the low income sector.

DCEO argues that one societal benefit is related to the fact that ratepayers and/or taxpayers are currently subsidizing the energy bills of many low income households. DCEO asserts that generally, there is only one opportunity to get into these homes to improve their energy efficiency. DCEO wants to seize this opportunity and minimize the long-term subsidy of energy bills. DCEO claims its low income energy efficiency programs are designed to achieve the maximum amount of energy efficiency within the fiscal constraints of the programs.

According to DCEO, low income residents are very protective of their private lives and tend to only allow outside groups into their homes once. Because low income energy bills are subsidized by ratepayers and/or taxpayers, DCEO argues maximizing energy efficiency in those homes that receive these subsidies directly reduces or eliminates the need for society to cover these costs. DCEO also asserts that in homes not covered by these subsidies, even a slight decrease in energy bills, for example resulting from the difference between a 95 versus a 92 AFUE furnace, has a tremendous impact on the disposable income of low income consumers that can be used for essentials like food, medicine, etc.

DCEO states that the Evaluation Measurement and Verification contractors noted in their evaluations of DCEO's low income energy assistance programs that DCEO followed best practices for designing low income programs. DCEO says the programs have been designed by a consultant with more than 30 years experience with low income programs and staff with more than 20 years experience.

DCEO says it must be able to meet its statutory gas savings goal and contribute meaningfully to the electric savings goal while still following best practices in serving its relevant sectors. DCEO considers the energy savings gained per dollar expended because this ratio is critical to meeting its energy savings targets. This ability has been factored into DCEO's analysis along with balancing its important public policy goals. DCEO claims the procedure described by Staff to identify cost effective measures was used by DCEO in developing its plan. DCEO believes that applying this approach strictly with no exceptions is unnecessary and overly limited.

Staff opines that the energy savings from DCEO's Building Energy Code Compliance Program are not incremental savings and should not be paid for through ratepayer funding. Staff argues that since the ARRA already requires DCEO to improve compliance with energy codes and that the Energy Efficiency Buildings Act requires DCEO to provide training on building codes, that ratepayers under DCEO's Energy Efficiency Portfolio should not pay for such programs. DCEO argues that the existence of such mandates does not mean that any funding has been specifically provided for them.

The EEP statute requires "specific proposals to implement new building and appliance standards." In DCEO's view, it is clear that the General Assembly intended for ratepayer funds to be used for such programs. DCEO claims it is in part because of this language and the potential availability of state funds that the Governor was able to sign a letter agreement with the US Department of Energy that the state would work towards the goal of improving compliance with energy efficiency building codes. DCEO asserts that the U.S. Department of Energy guidance on the ARRA programs has specific language that the funding is to "supplement not supplant" state funding for energy programs. DCEO says it has worked to supplement the funds it has been using from the EEP law for building code training with federal funds. Specifically, DCEO indicates it has applied for and received a grant to measure current compliance levels with energy efficient building codes, and DCEO has encouraged cities and counties to use Energy Efficiency and Conservation Block Grant ("EECBG") funds for building code related activities. DCEO plans to continue using EEP funds to support its building code training programs as part of its "market transformation" programs. DCEO says these programs will result in incremental and measurable energy savings that can be counted as discreet to the EEP funding.

Staff takes the position that federal facilities should not receive ratepayer funds. Staff refers to an executive order signed by President Obama that requires construction and renovation of federal buildings to comply with "Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings" and to aim to "reduce the energy cost budget by 20% below pre-renovations 2003 baseline." The State of Illinois has similar mandates. The Agency Energy Efficiency Act of 2008 mandates the State to reduce energy use in State facilities by 10% within 10 years. DCEO says Executive

Order #11 sets an ambitious objective of reducing electricity and natural gas consumption in State-owned facilities by 25% by 2025, among other provisions. DCEO adds that the City of Chicago adopted a Climate Action Plan that commits the city to reducing energy use in buildings by 30%. According to DCEO, most cities in Illinois are either working towards or have already adopted similar commitments. DCEO asserts that Staff's argument, taken to its logical conclusion, would prohibit DCEO from providing funding to any units of government that are setting ambitious energy efficiency goals. In DCEO's view, just because a mandate exists to improve efficiency does not mean that funding is available and that the mandate is actually being met. DCEO believes it has to have the ability to provide funding to any unit of government that is seeking to improve its energy efficiency, in order for these entities to actually implement energy efficiency measures given the realities of public sector budget constraints and for its Public Sector Energy Efficiency programs to be effective.

DCEO states that ELPC witness Crandall addresses several points with respect to DCEO's plan related to the avoided costs used in DCEO's cost model and varying public sector incentives by region.

ELPC witness Crandall describes why he believes that the avoided costs used by DCEO should be considered flawed. DCEO indicates that it is open to considering a variety of different cost factors in its modeling process. In this instance, DCEO says it used the avoided costs provided by both Ameren and ComEd. DCEO indicates it also used the escalation rates provided by Ameren and ComEd. DCEO says it recognizes ELPC's observation that the difference between the data provided by the two utilities is significant. However, DCEO indicates it has and will continue to utilize the avoided cost data provided by the utilities (Ameren and ComEd) unless and until these figures are demonstrated to be unequivocally problematic.

While DCEO acknowledges that overall TRC test results may change as a result of modifying the avoided costs included in its model as ELPC suggests, DCEO believes the impact would be negligible. Given the factor by which DCEO's portfolio passes the TRC test, DCEO asserts that this would have no impact on DCEO's plan.

ELPC further argues that DCEO used incorrect Ameren avoided costs. DCEO says it has no indication from either utility that their avoided cost data is flawed. If Ameren, or ComEd, informs DCEO of a change in the data provided (as Ameren did recently), DCEO will reconsider its analysis regarding program development and portfolio design.

ELPC takes the position that DCEO should vary its Public Sector programs across the state, setting different levels of incentives and varying the list of eligible measures depending on the avoided costs of individual utilities. DCEO does not agree with this position. DCEO says it is seeking to maintain consistency, fairness and simplicity, as wells as to minimize administrative costs and avoid confusion by program participants. DCEO states that avoided costs are used in the TRC test to determine which measures are cost-effective. DCEO says they are not directly factored into the decision about incentive levels. Once it is determined whether a measure is cost-effective, DCEO says incentives are set at a level that will generate the targeted level of program activity. DCEO has found that to entice public sector entities to adopt energy efficiency measures, the incentives generally have to be set at 50% or more of incremental costs. DCEO has not found that the level of incentive needs to vary based on avoided costs; rather, DCEO suggests the incentives may need to be higher in areas of the state under greater economic distress.

DCEO indicates it will continue to consider varied incentive levels throughout the implementation of its programs. If a situation arises where different incentive levels by region is proved to be far superior with no risk of discrimination, confusion or over-complexity, DCEO says it may choose to make such an offering. However, at this time, DCEO believes the benefits of consistency outweigh the purely hypothetical benefits of varying its incentive levels in different parts of Illinois.

6. Commission Analysis and Conclusions

Staff, the AG, and NRDC-ELPC have raised concerns with some aspects of DCEO's plan and made proposes for changes in some instances. In the Commission's view, while DCEO is given great latitude in the statute, the Commission retains broad authority over the energy efficiency and demand response plans. DCEO asserts that its portfolio passes the TRC test and the Commission has limited authority over DCEO.

While the Commission appreciates Staff's concerns regarding lost opportunities, this argument seems similar to arguments raised regarding Ameren's proposed motors measures. Similarly, the Commission is not convinced Staff's position should be accepted With regard to building energy code compliance and Federal facilities, given that the customers at issue here are utility customers, the Commission is not convinced it is inappropriate for ratepayer supplied funds to be used support energy efficiency measures.

With regard to avoided costs, ELPC has raised an interesting issue; however, the estimation of avoided costs is not a simple matter. While the Commission is not convinced that ELPC's position is correct, the Commission encourages DCEO to consider the possibility of modifying the method by which it uses avoided costs in the TRC before filing the next plan. The AG suggests that the Commission expressly modify DCEO's plans to expand its direct marketing efforts in schools and other public facilities. While the Commission believes such a modification is not necessary, the Commission urges DCEO to consider undertaking the AG's recommendation, if it believes it is appropriate to do so. Given the circumstances and the Commission's belief that, overall, DECO's proposed plan is reasonable, the Commission does not believe it is necessary or appropriate to require or order changes to DECEO's plan which other parties have suggested. The Commission finds that DCEO's proposed plan complies with applicable statutes.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, and being fully advised in the premises, is of the opinion and finds that:

(1) The Ameren Illinois Company d/b/a Ameren Illinois is an Illinois corporation engaged in the transmission, sale and distribution of electricity and gas to the public in Illinois and is a public utility within the meaning of Section 3-105 of the Public Utilities Act, an electric utility as defined in Section 16-102 of the Public Utilities Act, and a gas utility as defined in Section 19-105 of the Public Utilities Act;

(2) the Illinois Department of Commerce and Economic Opportunity is a state agency that is statutorily obligated, pursuant to 220 ILCS 5/8-103(e), to implement 25% of a utility's energy efficiency and demand response plan, therefore, pursuant to statute, this portion of the plan is subject to Commission approval before implementation;

(3) the Illinois Department of Commerce and Economic Opportunity is a state agency that is statutorily obligated, pursuant to 220 ILCS 5/8-104(e) to utilize 25% of a utility's natural gas funding and achieve no less than 20% of the natural gas savings requirements; therefore, pursuant to statute, this portion of the plan is subject to Commission approval before implementation;

(4) the Commission has subject-matter jurisdiction and jurisdiction over Ameren Illinois and the Illinois Department of Commerce and Economic Opportunity;

(5) the findings of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby incorporated into these findings;

(6) the testimony and exhibits admitted into the record provides substantial evidence that the Energy Efficiency and Demand Response Plan filed by Ameren Illinois will meet the filing requirements of Section 8-103(f) and 8-104(f) of the Public Utilities Act, if Ameren submits a revised Plan 2 in a compliance filing within 30 days of the date of this Order that incorporates and is consistent with the conditions and requirements stated herein;

(7) Ameren Illinois shall make a filing within 30 days of the date of this Order providing a revised Energy Efficiency and Demand Response Plan pursuant to Section 8-103 and 8-104 of the Public Utilities Act, which revised plan contains terms and provisions consistent with and reflective of the findings and determinations made in this Order;

(8) Ameren Illinois shall provide with the revised Energy Efficiency and Demand Response Plan mechanisms for recovering its Incremental Costs incurred in association with the energy efficiency and demand response measures, consistent with and reflective of the findings and determinations made in this Order.

IT IS THEREFORE ORDERED by the Commission that the Petition filed by Ameren Illinois requesting approval of its Energy Efficiency and Demand Response Plan and the proposed Riders EDR and GER is hereby conditionally approved, subject to Ameren filing a compliance filing that incorporates the findings and conclusions herein and is consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that Ameren Illinois is hereby authorized to and directed to make a filing within 30 days of the date of this Order, such filing shall be a revised Energy Efficiency and Demand Response Plan pursuant to Section 8-103 and 8-104 of the Public Utilities Act which revised plan contains terms and provisions consistent with and reflective of the findings and determinations made in this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved are hereby disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 21st day of December, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman